

*Execution Version*

## **ROOFTOP SYSTEM SITE LEASE AGREEMENT**

This ROOFTOP SYSTEM SITE LEASE AGREEMENT (this “Lease”) is made and entered into as of June 13, 2023 (the “Effective Date”) by and between Monterey Solar 1 LLC a California limited liability company (“Lessee”), and the County of Monterey, a political subdivision of the State of California (“Lessor”). Each of Lessor and Lessee are sometimes referred to as a “Party” and collectively as the “Parties.” “Lessee” shall include any permitted assignees pursuant to an assignment under Section 15.1.

WHEREAS, Lessor is the owner of certain improved real property located at 1414 Natividad Road, Salinas, CA 93906 (the “Premises”), and desires to grant a lease of the rooftop areas on said improvements, as more particularly described on Exhibit A (the “Project Site”), which includes the area on which the System (hereinafter defined) will be installed; and

WHEREAS, pursuant to the terms of that certain Power Purchase Agreement (“PPA”) between Lessee and Lessor, dated as of the date hereof, Lessee intends to own, and operate certain photovoltaic solar energy generation equipment and associated facilities, as described in Exhibit C (the “System”) and desires to obtain a lease of the Project Site in order to install and operate the System.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

### **AGREEMENT**

- 1. DEFINITIONS.** Capitalized terms shall have the meanings assigned to them herein.
- 2. LEASE.**

**2.1 Lease.** Lessor hereby leases to Lessee the non-exclusive rights to use and access the Premises for the purposes of installing, maintaining, repairing and decommissioning the System, in accordance with the terms and conditions and for the purposes set forth herein. The Parties intend that this Lease create a valid and present interest in the Premises in favor of Lessee. Therefore, this Lease is an interest in and encumbrance upon the Premises which shall run with the land and shall be binding upon the Premises, and Lessor and its successors and assigns for the benefit of Lessee and its successors and assigns.

**2.2 Term.** The term of this Lease shall commence on the Effective Date and shall be coterminous with the term of the PPA (“Term”).

In the event Lessor exercises an option to purchase the System pursuant to the PPA or Lessee otherwise transfers the equipment constituting the System to Lessor under the PPA, this Lease shall terminate as of the date of the closing of such transfer.

**2.3** Payment to Lessor. Lessee shall pay to Lessor as rent the one-time sum of \$1 (the “One-Time Payment”) within fifteen (15) days after the Effective Date. Lessor acknowledges and agrees that the One-Time Payment constitutes payment in full of rent for the Term, and no additional amount shall be due or owing to Lessor under this Lease.

**2.4** Permitted Uses. Lessee shall have the exclusive right to occupy and use the Project Site for solar energy conversion, for the collection, storage, and transmission of electric power, and for related and incidental purposes and activities (collectively, “Operations”) including, but not limited to, the construction, installation, improvement, relocation, operation, maintenance and repair of the System and removal of the System. Lessee agrees that said right shall be non-exclusive to other uses of the rooftop areas, provided that such other uses shall in no event impair or interfere with its Operations.

**2.5** Lessee’s Exercise of Rights. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee shall not unreasonably interfere with Lessor’s use, operation, or maintenance of the Premises. The System shall be installed within the areas of the Project Site.

**2.6** Premises Utilities. Unless stated otherwise in the PPA, Lessor shall provide existing and available utilities to the Project Site in connection with Lessee's construction, start-up, maintenance, repair, replacement, operation and removal of the System. Lessor acknowledges and agrees that Lessee’s use of the Premises includes the nonexclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, and telephone and communication lines.

**2.7** Construction Laydown Area. Lessor shall provide Lessee sufficient space on the Premises for the temporary storage and staging of tools, materials and equipment reasonably necessary during installation and any maintenance, repair, replacement or removal of the System, provided that Lessee shall use commercially reasonable efforts to minimize disruption to Lessor’s operations, and provided further that Lessee understands and acknowledges that space is limited at the Premises. Lessor and Lessee shall coordinate and cooperate in determining the amount of space and specific portion of the Premises necessary for such purposes. Lessee shall have access to such area twenty (24) hours a day, seven (7) days per week.

**2.8** Notice. Except as may be required by an emergency, Lessee shall give Lessor reasonable written or telephonic notice before any entry onto the Premises outside of normal business hours by Lessee’s employees, agents, or contractors. Notwithstanding anything to the contrary in this Lease, Lessee shall be permitted to access the Premises (i) during normal business hours; and (ii) twenty-four (24) hours a day, seven (7) days a week for emergency purposes as reasonably determined by Lessee. In the event Lessee enters the Premises due to an emergency, Lessee shall promptly notify Lessor of its entry and the nature of the emergency. Unless otherwise agreed in advance, normal business hours shall mean Monday through Friday, 8AM through 5PM on those days the Lessor’s administrative offices are open.

### **3. EASEMENTS.**

**3.1** Access Easement and Use Rights. Lessor grants Lessee a nonexclusive easement for access and use of the Premises, on, under, over, and across the Premises, seven (7) days a week,

twenty four (24) hours a day, excluding that portion of the Premises used as the county jail and which has restricted public access, for the purposes of locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the “Use Rights”). The Use Rights include the right of parking, access, and ingress to and egress from the System on, over, and across the Premises during the Term, and shall survive for a period of one hundred eighty (180) days following the termination of this Lease for the purpose of removing the System. Without limiting the foregoing grant, Lessor covenants that the Use Rights may be used to achieve all the purposes set forth in this Lease. Throughout the Term of the Lease, as described below, Lessor hereby grants Lessee an easement through the Premises, including all elevators, stairways or other access points of egress and ingress for purposes of accessing the rooftop of the Premises for the purpose described herein and pursuant to the terms and conditions set forth below.

### **3.2 Solar Easement.**

3.2.1 Open Access to Sun. Lessor hereby grants and conveys to Lessee an exclusive easement on, over and across the Premises for the following: the open and unobstructed access to the sun to the System on any of the Premises and to ensure adequate exposure of the System to the sun. In addition, Lessor hereby grants and conveys to Lessee an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the “Solar Easement”) throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any System is or may be located at any time from time to time (each such point referred to as a “Site”) and for a distance from each Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises.

3.2.2 Lessor Improvements. Trees, buildings and other improvements located on the Premises as of the date of this Lease will be allowed to remain, and Lessee may not require their removal. Lessor may not place or plant any trees, buildings or improvements (an “Improvement”) on the Premises after the date of this Lease which may, in Lessee’s sole judgment, impede or materially interfere with the open and unobstructed access to the sun to any Site or System, unless Lessor has received written approval from Lessee for any such trees, structure or improvement. Subject to the foregoing, Lessor may construct an Improvement on the Premises if such Improvement meets the following requirements:

(a) Such Improvement poses no interference with any part of the System located on the Premises; and

(b) Such Improvement has a Maximum Height = [(distance to fenceline) + 20’] / 3], with such Improvements being located at least 20’ from the nearest fence line or edge of the Premises.

(an Improvement that complies with all of the foregoing restrictions will be referred to as a “Permitted Improvement”).

Lessor may construct such Permitted Improvements without the prior consent of Lessee. However, should Lessor construct an Improvement that is determined by Lessee to violate or not be in compliance with any of the restrictions of this section, Lessee may provide notice to Lessor that said Improvement must be removed within thirty (30) days of Lessor's receipt of Lessee's notice. Should Lessor fail to remove the non-complying Improvement within such thirty (30) day period, Lessee may cause the same to be removed and may off-set the cost of the removal against any lease payments due hereunder to Lessor.

3.2.3 **No Interference.** Lessor will not materially interfere with, and will not allow any other party to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Premises.

**3.3 Cable Easement.** Lessor hereby grants and conveys to Lessee, a non-exclusive easement to use portions of the Premise's riser systems, chase ways, exterior wall surface, roof surface, ground surface or below ground (the "Cable Easement"); which areas shall be referred to herein as the "Cable Easement Area," for the purposes of installing, operating, maintaining, interconnecting, repairing, removing and replacing cables, conduits, network connections, data acquisition and telecommunications lines and related transmission lines, all of which shall be used in connection with the operation of the System. Lessee shall exercise reasonable care and reasonable consideration in entering upon the Cable Easement Area so as to not unreasonably interfere with the use and enjoyment of the Cable Easement Area by its owners and occupants. The Cable Easement granted herein shall bind Lessor and its successors under this Lease; provided, however, that, for the purpose of removing the facilities located in the Cable Easement Area, the term of the Cable Easement shall automatically terminate one hundred eighty (180) days after the date of termination of the Term of this Lease. Lessor shall keep the Cable Easement Area free of obstruction and shall not construct or place in or on the Cable Easement Area any landscaping, trees, bushes, buildings or other structures of any kind in a manner which may interfere with or damage the cables, conduits and related transmission.

**3.4 Utility Easements.** Lessor agrees to reasonably cooperate, at Lessee's sole cost and expense, in the granting of reasonably necessary easements to the applicable utility to install such utilities on, over and/or under and through the Premises as necessary for Lessee to operate and interconnect the System, provided, however, the location of such utilities shall be mutually agreed upon by the applicable utility, Lessor and Lessee. In all events, the easements shall include a provision that the easements shall automatically expire upon the date that is one hundred eighty (180) days after the date of expiration or earlier termination of the Lease.

#### **4. RIGHTS OF LESSEE.**

**4.1 Solar Resources.** Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations on, the Premises. Lessor shall not grant any rights in the Premises purporting to permit others to conduct Operations on the Premises in derogation of Lessee's sole and exclusive rights and privileges hereunder. Without the prior written consent of Lessee, Lessor shall not (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including without limitation any environmental regulation, land use ordinance, or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the System on the Premises or (ii) grant,

confirm, acknowledge, recognize, or acquiesce in any right claimed by any other Person to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee in resisting and disputing such claims.

**4.2 Signage.** Lessee shall have the right to erect, modify, and maintain reasonable signage on the Premises with respect to the System and to Lessee's interests therein, subject to approval from Lessor.

**4.3 Enforcement of Legal Rights.** Lessee shall have the right to enforce Lessor's rights under applicable laws protecting solar energy systems from obstruction. Lessor shall cooperate with any efforts by Lessee to enforce such rights.

**4.4 Non-Interference.** In no event during the Term will Lessor construct, build or locate, or allow others (via the granting of easements, leases, subleases, licenses or other agreements) to construct, build, or locate any equipment or facilities (solar or otherwise) that would interfere with the System or otherwise engage in, or allow others to engage in activity, that might impede the System's access to the sun or decrease the output or efficiency of the System.

## **5. DESIGN AND CONSTRUCTION OF SYSTEM.**

**5.1 Design and Construction.** Lessor hereby consents to the construction of the System in accordance with the plans and specifications set forth on the attached Exhibit C. Lessee shall cause its contractors to comply with Lessor's reasonable and customary safety requirements and to coordinate construction of the System with Lessor so as to reasonably minimize disruption to the Premises and to Lessor's normal operations and activities thereon. Lessee shall not release Hazardous Materials on the Premises. As used in this Lease, "Hazardous Materials" means any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic under any applicable law, and asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

**5.2 Permits and Approvals.** Lessee shall obtain all necessary local development permits and approvals to allow its use of the Premises under this Lease. Upon Lessee's request, Lessor shall reasonably assist and cooperate with Lessee to acquire and maintain approvals, permits, and authorizations or to facilitate Lessee's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including: providing any building owner or occupant authorizations; and signing and processing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Lessor. Lessor shall also deliver to Lessee copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law to be in the name or physical control of Lessor. Lessee shall reimburse Lessor for reasonable and necessary third-party costs incurred by Lessor in relation to Lessor's assistance with such matters.

**5.3 Acknowledgment of Lessor for Roof Mounted Systems.** Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, including penetrations into the roof surface. Lessor agrees to

review and approve any System load studies provided by Lessee, including those relating to the weight of the System and the integrity of the roof. Lessee shall be responsible for the repair of the roof of the Premises in the event that it becomes physically damaged as a result of Lessee's installation, operation, and/or maintenance or failure to maintain the System.

**5.4 Removal Upon Termination.** Upon the termination or expiration of this Lease for any reason, Lessee shall, within three hundred sixty-five (365) days after the date of expiration (or sooner if required by the PPA), remove the System from the Premises, and restore the Premises' rooftop to its condition as of the Effective Date, normal wear and tear excepted unless the System is purchased by Lessee. Removal of the System shall be at the cost of Lessee.

## **6. THE PREMISES.**

**6.1 Confirmation of Ownership.** At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as Lessee or Lessee's title company may require to confirm Lessor's ownership of the Premises or to complete or evidence the full granting of the leasehold interest in the Premises as intended by this Lease.

### **6.2 Liens.**

**6.2.1 Subordination.** Lessor shall cooperate with Lessee to obtain a Subordination, Non-Disturbance and Attornment Agreement (an "SNDA") from each lienholder which provides on terms reasonably acceptable to Lessee that the lien and rights of the lienholder shall be subordinate to this Lease. Lessor will also obtain any necessary consent and/or SNDA in favor of Lessee and on terms reasonably acceptable to Lessee from any and all entities having a possessory interest in the Premises.

**6.2.2 Notice to Premises Lienholders and Release.** Lessor shall give effective notice of Lessee's ownership of the System and the System's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (collectively, "Liens") upon the real property and fixtures that are part of the Premises. If there is any Lien against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessor shall obtain a disclaimer or release of such Lien. Lessor consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises, and any other filing by Lessee in a public office regarding its ownership of the System deemed necessary or appropriate by Lessee, and Lessor hereby appoints Lessee as its agent with regarding to any such filing and authorizes Lessee to take required actions on Lessor's behalf required for such filing.

**6.2.3 System Liens.** Lessor shall not directly or indirectly allow any Lien on or with respect to the System by, through or under Lessor. If Lessor becomes aware of a Lien on the System by, through or under Lessor, Lessor shall promptly give Lessee written notice of such Lien and shall take such action as is necessary or appropriate to have such Lien discharged and removed. Lessor shall indemnify Lessee against all reasonable costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such Lien.

6.2.4 Premises Liens. Lessee shall not directly or indirectly allow any Lien by, through or under Lessee, on or with respect to the Premises or any interest therein, excluding Lessee's leasehold interest created pursuant to this Lease, or any other asset of Lessor, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the System by Lessee (including mechanics', labor or materialmen's liens) (collectively, "Permitted Liens"). Lessee shall defend and indemnify Lessor against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any non-Permitted Liens.

6.3 Quiet Enjoyment. Lessee shall enjoy quiet and peaceful use, enjoyment and possession of the Project Site, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, and neither Lessor nor any person claiming by, through or under Lessor shall disturb Lessee's quiet and peaceful use, enjoyment and possession of the Project Site.

6.4 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation activities that may adversely affect the System's exposure to sunlight. Except when necessary to address emergency situations, Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action that will interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Lease; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

6.5 System Property of Lessee; Transfer of the Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System and all equipment (including, but not limited to, photovoltaic modules or panels, inverters, meters, wire, data monitoring equipment, and cabling), components and moveable property of Lessee attached to or used in the operation of the System, that no portion or component of the System is a fixture, and that in the event that the Premises are sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered (a "Transfer"), such Transfer shall not attach to or affect the System, or Lessee's ownership rights to the System.

6.6 Transfer of Premises. Lessor shall not Transfer all or any portion of the Premises unless the transferee agrees in writing that its interest in the Premises is subject and subordinate in all respects to the terms of this Lease, unless the transfer is ordered by a court with competent jurisdiction. Lessor shall give Lessee at least sixty (60) days' prior notice of any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer.

6.7 Premises Security, Health and Safety. Lessor shall provide reasonable measures for the security of the Premises, including restricting access to the area on which the System is

located and providing monitoring of the Premises' security alarms, if applicable. Lessor shall maintain the Premises in a structurally sound and safe condition consistent with all applicable Laws. If Lessor becomes aware of any circumstances relating to the System that creates an imminent risk of damage or injury to the System or any employee of Lessee, Lessor shall promptly notify Lessee.

**6.8 System Security.** With Lessor's approval, not to be unreasonably withheld, Lessee may install all security measures that Lessee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, fences, barbed wire, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations.

**6.9 Maintenance of Premises.** Lessor shall, without interfering with the operation of the System, maintain the Premises in good condition and repair, including the integrity of the roof, so that Lessee is able to comply with its obligations under this Lease. Lessor shall use commercially reasonable efforts to maintain Lessor's electrical energy equipment located on the Premises in good condition and repair so as to be able to receive and use the energy generated by the System. Lessor shall maintain its connection(s) and service contract(s) with its local utility, or any successors thereto, so that Lessor can, upon any suspension or interruption of delivery of energy from the System, provide the Premises with its full requirements for electricity.

**6.10 System Maintenance.** During the Term, Lessee shall, at Lessee's sole cost, maintain the System, the Project Site and all areas of the Premises used by Lessee in the Operations, in accordance with applicable laws and prudent industry practices.

**6.11 Roof Maintenance.** Lessor shall be solely responsible for, and bear all costs and expense relating to, maintaining the roof of the buildings on which the System is located, including all required repair (including leak repair), remediation and maintenance of such roof, unless such repair, remediation and maintenance is required as a direct result of the negligent installation, maintenance, or repair of the System. Lessor shall consult with Lessee before performing any required roof repair, remediation and maintenance that may affect the System, and Lessee shall be permitted to witness any such repair, remediation and maintenance. In the event the System must be temporarily disconnected or removed in order for Lessor to perform roof repair, remediation or maintenance, Lessor shall consult with Lessee in advance of any such activity and Lessee shall disconnect and remove the System at Lessor's expense, and Lessor shall pay to pursuant to the PPA for any remaining period during which the System is disconnected. Lessor shall be responsible for maintaining and enforcing all warranties relating to the roof.

**6.12 Reserved.**

**6.13 Clean Condition.** Lessee shall not unreasonably clutter the Project Site or the Premises and shall collect and dispose of any and all of Lessee's refuse and trash.

**6.14 Taxes.** Lessor shall pay when due all real property taxes and assessments possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any

kind which are assessed, levied, charged, confirmed, imposed or levied against the Premises or the System by any governmental body or public authority.

**6.15 Incentives.** The Parties further agree that all Incentives (as defined in the PPA) shall be allocated as set forth in the PPA and shall not attach to or be deemed a part of, or fixture to, the Premises.

**6.16 Pre-Existing Site Conditions.** Lessor will compensate Lessee for any reasonable and necessary out-of-pocket expenses incurred by Lessee to remedy, correct, amend, upgrade, or perform any work related to pre-existing conditions on the Premises and Project Site that were not reasonably discoverable or foreseen by Lessee through its initial site information review, investigation, and engineering site audit, including, but not limited to, repair of pre-existing construction defects (including in the roofing or electrical system on the Premises and Project Site), repair of damage to underground utilities not identified by the utility, and any additional costs resulting from government and/or utility inspectors who determine that pre-existing conditions require correction or amendment, unless such corrections or amendments are specifically provided for in this Lease.

## **7. REPRESENTATIONS AND WARRANTIES**

**7.1 Representations of Lessor.** Lessor represents and warrants to Lessee that:

7.1.1 Lessor has the requisite corporate, partnership, limited liability company, or legal capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessor;

7.1.2 this Lease constitutes Lessor's legal, valid and binding obligation enforceable against it 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;

7.1.3 no suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against Lessor that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessor to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessor;

7.1.4 Lessor owns the Premises in fee simple, subject to no liens or encumbrances except as set forth in Exhibit B. All persons or entities having any ownership or possessory interest in the Premises are signing this Lease;

7.1.5 there are no Hazardous Materials on or under the Premises; and

7.1.6 no governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery

of this Lease by Lessor or the performance by Lessor of its obligations hereunder which Lessor will be unable to obtain in due course; and

7.1.7 Lessor acknowledges that it has inspected the rooftop, that Lessor warrants the condition thereof and its suitability for Lessee's use, and that, except as may be expressly provided to the contrary in this Lease, Lessor shall make any alterations, improvements, or repairs in and to the rooftop to make same ready for Lessee's use and occupancy.

**7.2 Representations of Lessee.** Lessee represents and warrants to Lessor that:

7.2.1 Lessee has the requisite corporate, partnership or limited liability company capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessee;

7.2.2 this Lease constitutes Lessee's legal, valid and binding obligation enforceable against it 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;

7.2.3 no suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against Lessee that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessee to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessee; and

7.2.4 no governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Lease by Lessee or the performance by Lessee of its obligations hereunder which Lessee will be unable to obtain in due course.

**8. DEFAULT; REMEDIES.**

**8.1 Lessee Default.** Each of the following events shall constitute a "Lessee Default":

8.1.1 Lessee materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessor's notice of such breach, Lessee has failed to cure the breach within such thirty (30) day period, or (ii) if Lessee has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessee has failed to cure the breach within a further ninety (90) day period (such aggregate period not to exceed one hundred twenty (120) days from the date of Lessor's notice); or

8.1.2 (i) Lessee commences a voluntary case under any bankruptcy law; (ii) Lessee fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessee in an involuntary case under any bankruptcy law; or (iii) any

involuntary bankruptcy proceeding commenced against Lessee remains undismissed or undischarged for a period of sixty (60) days.

**8.2 Lessor's Remedies.** If a Lessee Default has occurred and is continuing, Lessor may terminate this Lease by written notice to Lessee following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity.

**8.3 Lessor Defaults.** The following events shall be defaults with respect to Lessor (each, a "Lessor Default"):

8.3.1 Lessor materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessee's notice of such breach, Lessor has failed to cure the breach within such thirty (30) day period, or (ii) if Lessor has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessor has failed to cure the breach within a further ninety (90) day period (such aggregate period not to exceed one hundred twenty (120) days from the date of Lessee's notice);

8.3.2 (i) Lessor commences a voluntary case under any bankruptcy law; (ii) Lessor fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessor in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessor remains undismissed or undischarged for a period of sixty (60) days; or

8.3.3 Lessor defaults under the PPA resulting in a termination thereunder.

**8.4 Lessee's Remedies.** If a Lessor Default has occurred and is continuing, Lessee may terminate this Lease by written notice to Lessor following the expiration of the applicable cure period. Lessee may also exercise any other remedy it may have at law or equity, including recovering from Lessor all resulting damages, which damages shall include, but not be limited to, the lost income and lost Incentives damages and all other amounts of any nature relating to this Lease.

## **9. LIMITATIONS.**

**9.1 Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS LEASE. THE FOREGOING NOTWITHSTANDING, THE LOST INCOME AND LOSS OF INCENTIVES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

**9.2** Equitable Relief. The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Lease, and that, accordingly, in the event of any such breach or threatened breach, either Party shall be entitled to immediately seek any and all remedies available to it at law or in equity, including but not limited to an injunction or specific performance, from a court of competent jurisdiction.

## **10. FINANCING ACCOMMODATIONS.**

**10.1** Lessor Acknowledgment. Lessor acknowledges that Lessee may finance the System and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Lease and a security interest in the System to a financial institution, leasing company, or lender providing funds or extending credit to Lessee or its affiliates (a "Financing Party"). In order to facilitate such financing, and with respect to each Financing Party, Lessor agrees as follows:

10.1.1 Consent to Collateral Assignment. Lessee shall have the right to assign this Lease as collateral for financing or refinancing of the System, and Lessor hereby consents to the collateral assignment by Lessee to any Financing Party of Lessee's right, title, and interest in and to this Lease.

10.1.2 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Lease:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Lease in accordance with the terms of this Lease. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Lease and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Lease and to perform any other act, duty, or obligation required of Lessee hereunder or cause to be cured any default or event of default of Lessee in the time and manner provided by the terms of this Lease. Nothing herein requires Financing Party to cure any default of Lessee (unless Financing Party has succeeded to Lessee's interests) to perform any act, duty, or obligation of Lessee, but Lessor hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Lessee to Financing Party, Financing Party shall give notice to Lessor of the transferee or assignee of this Lease. Any such exercise of remedies shall not constitute a Lessee Default.

(d) Upon any rejection or other termination of this Lease pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Lessor shall enter into a new site lease agreement with Financing Party or its assignee on substantially the same terms as this Lease.

10.1.3 Financing Party Cure Rights. Lessor shall not exercise any right to terminate or suspend this Lease unless Lessor has given prior written notice to each Financing Party of which Lessor has notice. Lessor's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party has the longer of thirty (30) days and the cure period allowed for a default of that type under this Lease to cure the condition; 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. Lessor's and Lessee's obligations under this Lease shall otherwise remain in effect, and Lessor and Lessee shall be required to fully perform all of their respective obligations under this Lease during any cure period.

10.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Lessee's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 10.1.3, then this Lease shall continue in full force and effect.

**10.2** Notice of Defaults and Events of Default. Lessor agrees to deliver to each Financing Party a copy of all notices that Lessor delivers to Lessee pursuant to this Lease.

## **11. NOTICES.**

**11.1** Notices. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Lessee:                    111 Mission Street  
Santa Cruz, CA 95060  
Attention: Corrina Hansen  
Phone: (408) 426-5420

To Lessor:                    168 W. Alisal St.  
Third Floor  
Salinas, CA 93923  
Attention: Sustainability Program  
Phone: (831) 755-5115

## **12. GOVERNING LAW; DISPUTES.**

**12.1** Choice of Law. This Lease shall be construed in accordance with the laws of the State of California, without regard to the conflict of laws principles thereof.

**12.2** Disputes.

12.2.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within fifteen (15) days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within thirty (30) days of their first meeting, either Party may pursue any remedy available to it in accordance with Section 12.2.2.

12.2.2 Venue. Any controversy or dispute not amicably resolved by the Parties or through management negotiations shall be brought exclusively in the state or federal courts serving Monterey County, California. Each Party agrees to the laying of such venue and agrees not to later object to such venue as being an inappropriate or inconvenient forum.

### **13. INDEMNIFICATION.**

**13.1 Lessee's General Indemnity**. Lessee shall indemnify, defend, and hold harmless Lessor (including Lessor's permitted successors and assigns) and Lessor's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Lessor Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Lessor Indemnified Parties arising from or relating to (i) Lessee's breach of this Lease, or (ii) the negligence or willful misconduct of Lessee's invitees. Lessee's indemnification obligations under this Section 13.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessor Indemnified Party.

**13.2 Lessee's Environmental Indemnity**. If there is a PPA in place between the Lessor and Lessee and such PPA addresses environmental indemnities, then such PPA shall govern. If there is no such PPA, then this section shall apply. Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

**13.3 Lessor's General Indemnity**. Lessor shall indemnify, defend, and hold harmless Lessee (including Lessee's permitted successors and assigns) and Lessee's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Lessee Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including lost income from loss of Incentives and reasonable attorneys' fees if applicable, incurred by Lessee Indemnified Parties arising from or relating to (i) Lessor's breach of this Lease, (ii) the negligence or willful misconduct of Lessor, Lessor's tenants, or Lessor's invitees, or (iii) the failure of building or roof to support, in whole or in part, the System as installed, including changes in roof surface incline. Lessor's indemnification obligations under this Section 13.3 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessee Indemnified Party.

**13.4 Lessor's Environmental Indemnity**. . If there is a PPA in place between the Lessor and Lessee and such PPA addresses environmental indemnities, then such PPA shall govern. If

there is no such PPA, then this section shall apply. Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties for, from, and against, any claims, costs, damages, fees, or penalties, including lost income and and loss of Incentives, arising from the presence of any Hazardous Materials on or under the Premises, except to the extent that such presence is attributable to a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

#### **14. INSURANCE.**

**14.1 Insurance Required.** Each Party shall maintain in full force and effect throughout the Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit D (except that if the PPA requires more insurance from either Party, then the insurance provisions in the PPA shall govern). Each policy of insurance maintained by Lessor shall (a) name Lessee as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Lessee. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

**14.2** Reserved.

**14.3 No Waiver of Obligations.** The provisions of this Lease shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

#### **15. MISCELLANEOUS.**

**15.1 Assignments.** Neither Party shall have the right to assign any of its rights, duties, or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Lessee may assign any of its rights, duties, or obligations under this Lease, without the consent of Lessor, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

**15.2 Entire Agreement.** This Lease represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

**15.3 Amendments.** This Lease may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Lessee and Lessor.

**15.4 No Partnership or Joint Venture.** Lessee and Lessee's agents, in the performance of this Lease, shall act in an independent capacity and not as officers or employees or agents of Lessor. This Lease shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Lease).

**15.5 Headings; Exhibits.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Any Exhibits referenced within and attached to this Lease, including any attachments to the Exhibits, shall be a part of this Lease and are incorporated by reference herein.

**15.6 Remedies Cumulative; Attorneys' Fees.** No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Lease, the each Party shall pay for its attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

**15.7 Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

**15.8 Severability.** If any part, term, or provisions of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease and shall not render this Lease unenforceable as a whole. Instead, the part of the Lease found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

**15.9 Counterparts and Facsimile Signatures.** This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (".PDF") signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

**15.10 No Partnership or Sale.** Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller real property, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

**15.11 Brokers.** Lessor and Lessee each represent and warrant that it has not dealt with any broker in connection with this Lease and each Party agrees to hold the other Party harmless from and against all claims, costs and expenses, including a reasonable attorneys' fees, arising from claims of any broker, finder or other intermediary hereto alleging to have dealt with or acted on behalf of such Party in connection with this transaction and Lease.

**15.12 Waiver of Jury Trial.** EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM BY THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**15.13 Further Assurances.** Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the System to the extent required for the requesting Party to carry out the purposes of this Lease or fulfill any legal obligation or regulatory reporting requirements.

**15.14 Memorandum of Lease.** Lessor and Lessee agree to execute and record a memorandum of this Lease. Lessor shall execute, with notarization, and deliver to Lessee together with the its initial delivery of the signed Lease a recordable Memorandum of Lease substantially in the form attached hereto as Exhibit E ("Memorandum of Lease"), which shall include the Exhibit A description of the Premises and which Lessee shall then record in the Official Records of the County in which the Project Site is located. Lessee shall be responsible for the cost of recordation.

**15.15 Estoppel Certificate.** From time to time, upon written request by Lessee, Lessor shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Lessor, of Lessee's compliance with the terms of this Lease, or detailing any known issues of noncompliance.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties have caused this Rooftop System Site Lease Agreement to be duly executed and delivered as of the Effective Date.

**LESSOR:**

**LESSEE:**

**COUNTY OF MONTEREY**

**MONTEREY SOLAR 1 LLC**

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

Name:

Title:

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: Mynt Systems Inc. , it's sole member,  
 Title: Corrina Hansen CFO

9A9C1659Z694427

**EXHIBIT A**  
**PREMISES; PROJECT SITE**

**Legal Description of Premises, APN 003-851-014**

**For APN/Parcel ID(s): 003-851-014**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel A, as shown on that certain Parcel Map filed for record in Volume 18 of Parcel Maps, at Page 121, Monterey County Records.

**Project Site:**

1414 Natividad Rd, Salinas, CA
<b>Site and Facility Descriptions</b>

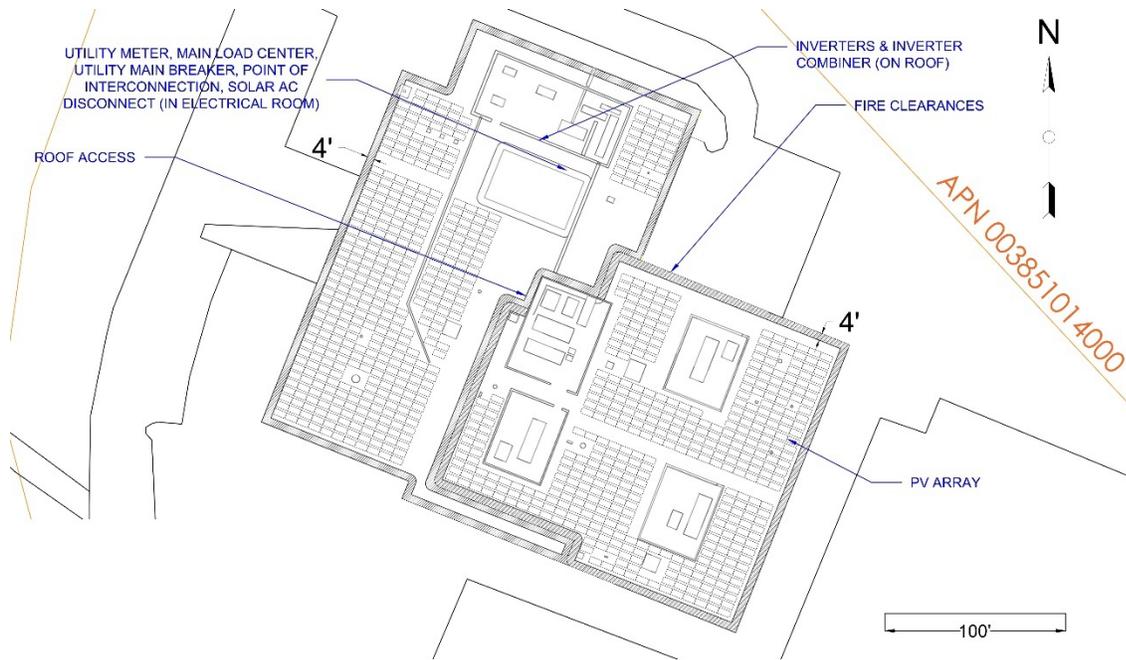


Exhibit A

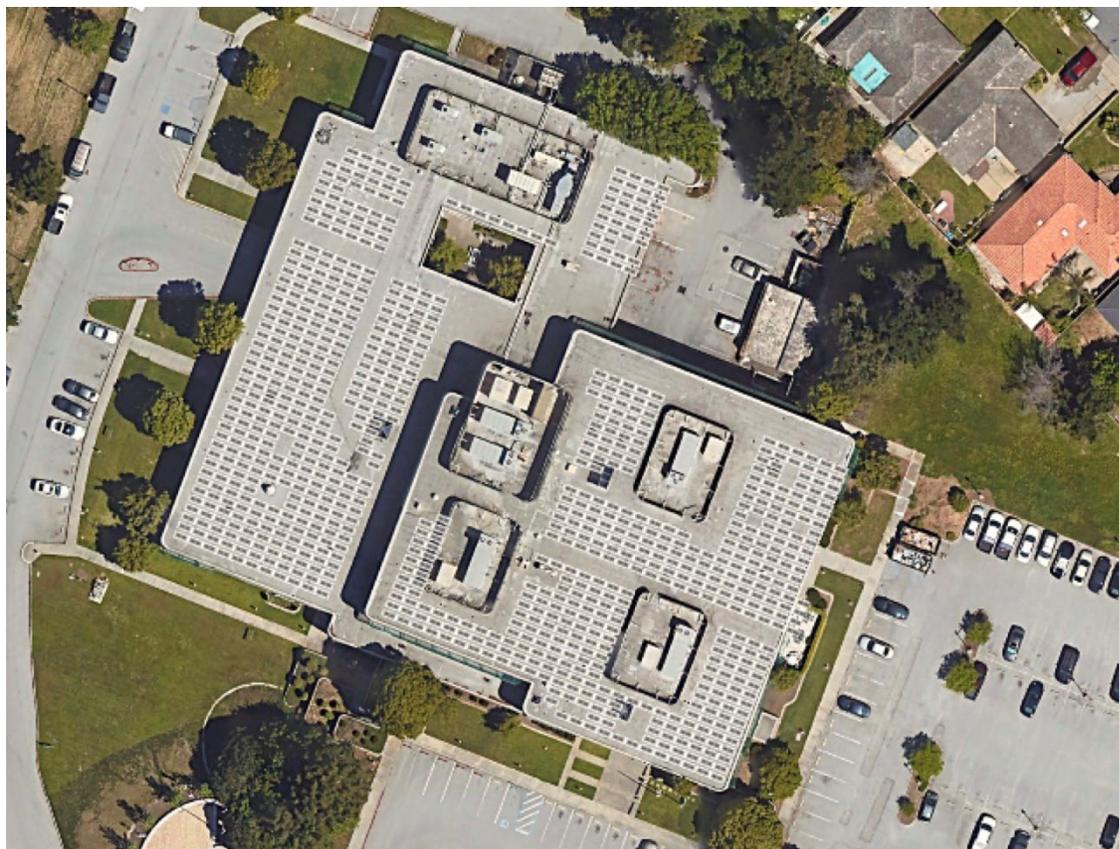


Exhibit A

**EXHIBIT B**

**ENCUMBRANCES ON LESSOR'S TITLE**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

NIXON PEABODY LLP  
300 South Grand Avenue, Suite 4100  
Los Angeles, California 90071  
Attention: Charles C. Wolf, Esq.

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**ASSIGNMENT AGREEMENT**

by and between

**COUNTY OF MONTEREY  
PUBLIC IMPROVEMENT CORPORATION**

And

**U.S. BANK NATIONAL ASSOCIATION,  
AS TRUSTEE**

Related to  
\$[ ]  
County of Monterey  
Certificates of Participation  
(2017 Public Facilities Refunding)

Dated as of August 1, 2017

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THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE

## ASSIGNMENT AGREEMENT

**THIS ASSIGNMENT AGREEMENT** (this “Assignment Agreement”), dated as of August 1, 2017, is by and between the COUNTY OF MONTEREY PUBLIC IMPROVEMENT CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the “Corporation”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Trustee (the “Trustee”).

### WITNESSETH:

**WHEREAS**, pursuant to a Ground Lease, dated as of the date hereof (the “Ground Lease”), which Ground Lease is recorded concurrently herewith, the County of Monterey (the “County”) has leased to the Corporation certain real property owned by the County, and the improvements thereto (the “Property”);

**WHEREAS**, the Property is more particularly described in Exhibit A hereto;

**WHEREAS**, pursuant to a Lease Agreement, dated as of the date hereof (the “Lease Agreement”), a memorandum of which Lease Agreement is recorded concurrently herewith, the Corporation has leased the Property back to the County;

**WHEREAS**, under the Lease Agreement, the County is obligated to make Base Rental Payments (as defined in the Lease Agreement) to the Corporation for the lease of the Property;

**WHEREAS**, the Corporation desires to assign, without recourse, certain of its rights in the Ground Lease and the Lease Agreement, including its rights to receive the Base Rental Payments under the Lease Agreement, to the Trustee for the benefit of the owners of the County of Monterey Certificates of Participation (2017 Public Facilities Refunding) (the “Certificates”) to be executed and delivered under the Trust Agreement, dated as of the date hereof (the “Trust Agreement”), by and among the Trustee, the Corporation and the County, which Trust Agreement is not recorded;

**WHEREAS**, in consideration of such assignment and the execution of the Trust Agreement, the Trustee has agreed to execute and deliver the Certificates, each evidencing a direct, fractional undivided interest in the Base Rental Payments; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Assignment Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

**Section 1. Assignment.** The Corporation, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign and transfer to the Trustee, irrevocably and absolutely, without recourse, for the benefit of the owners of the Certificates, all of its right, title and interest in and to the Ground Lease and the Lease Agreement, including, without limitation, its right to receive the Base Rental Payments to be paid by the County under and pursuant to the Lease Agreement; provided, however, that the Corporation shall retain the rights to indemnification and to payment or reimbursement of its reasonable costs and expenses under the Lease Agreement. This assignment is absolute and is presently effective. Upon execution of this Assignment Agreement, the Corporation shall have no right, title or interest in or to the Base Rental Payments, the Additional Rental Payments, the Lease Agreement or the Ground Lease. All rights assigned by the Corporation shall be administered by the Trustee in accordance with the provisions of the Trust Agreement.

**Section 2. Acceptance.** The Trustee hereby accepts the foregoing assignment, subject to the terms and provisions of the Trust Agreement, and all of the Base Rental Payments shall be applied, and the rights so assigned shall be exercised, by the Trustee as provided in the Lease Agreement and the Trust Agreement.

**Section 3. Conditions.** This Assignment Agreement shall impose no obligations whatsoever upon the Trustee beyond those expressly provided in the Lease Agreement and the Trust Agreement.

**Section 4. Further Assurances.** The Corporation shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and for the better assuring and confirming to the Trustee, for the benefit of the owners of the Certificates, the right, title and interest intended to be sold, assigned and transferred pursuant hereto.

**Section 5. Execution in Counterparts.** This Assignment Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 6. Governing Law.** This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 7. Captions.** The captions or headings in this Assignment Agreement are for convenience only and in no way define or limit the scope or intent of any provision of this Assignment Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Assignment Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**COUNTY OF MONTEREY PUBLIC  
IMPROVEMENT CORPORATION**

By: \_\_\_\_\_  
President  
[Michael J. Miller]

**U.S. BANK NATIONAL ASSOCIATION,  
AS TRUSTEE**

By: \_\_\_\_\_  
Authorized Officer





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

**RECORDING REQUESTED BY:**  
Chicago Title Company

Stephen L. Vagnini  
Monterey County Recorder

CRMARIA  
10/04/2017  
02:40 PM

**When Recorded Mail Document To:**  
NIXON PEABODY LLP  
300 South Grand Avenue, Suite 4100  
Los Angeles, CA 90071  
Attn: Charles C. Wolf, Exq.

**CHICAGO TITLE-ER SIMPLIFILE**

DOCUMENT: **2017054365**



<b>Titles:</b>	<b>1</b>	<b>Pages:</b>	<b>39</b>
Fees . . . .			.00
Taxes . . . .			.00
Other . . . .			.00
AMT PAID			\$ .00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LEASE AGREEMENT

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION**  
(Additional recording fee applies)

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

NIXON PEABODY LLP  
300 South Grand Avenue, Suite 4100  
Los Angeles, California 90071  
Attention: Charles C. Wolf, Esq.

DOCUMENTARY TRANSFER TAX \$ <u>0</u>
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
<u>J. Anderson</u>
Signature of Declarant or Agent determining tax. Firm Name

City of Salinas  
Government Agency and is exempt from  
transfer tax

**LEASE AGREEMENT**

by and between

**COUNTY OF MONTEREY  
PUBLIC IMPROVEMENT CORPORATION,**  
as Sublessor

And the

**COUNTY OF MONTEREY,**  
as Sublessee

Related to  
\$78,565,000  
County of Monterey  
Certificates of Participation  
(2017 Public Facilities Refunding)

Dated as of August 1, 2017

THIS TRANSACTION IS EXEMPT FROM FILING FEES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 27383 AND TRANSFER TAXES PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 11928

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EXHIBIT A – DESCRIPTION OF THE PROPERTY  
EXHIBIT B – BASE RENTAL PAYMENT SCHEDULE

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated as of August 1, 2017, is by and between the COUNTY OF MONTEREY PUBLIC IMPROVEMENT CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation"), as sublessor, and the COUNTY OF MONTEREY, a county and political subdivision of the State of California organized and existing under and by virtue of the laws of the State of California (the "County"), as sublessee.

### RECITALS

**WHEREAS**, pursuant to a Trust Agreement, dated as of May 1, 2007, by and between the County and U.S. Bank National Association as successor trustee (the "2007 Trustee"), the County executed and delivered \$152,680,000 aggregate principal amount of County of Monterey Certificates of Participation (2007 Refunding and Public Facilities Financing) (the "Refunded Certificates");

**WHEREAS**, the proceeds of the Refunded Certificates were used to (i) finance the acquisition, construction, rehabilitation and installation of certain capital facilities of the County, (ii) refinance certain lease payment obligations in connection with then outstanding certificates of participation and (iii) pay the costs of issuance in connection with the execution and delivery of the Refunded Certificates;

**WHEREAS**, the County desires to prepay lease payments to be made by the County pursuant to the Lease Agreement, dated as of May 1, 2007, by and between the County and the Corporation, (the "Prior Lease Agreement") which was executed in connection with the execution and delivery of the Refunded Certificates;

**WHEREAS**, in order to prepay the lease payments under the Prior Lease Agreement, the County will lease certain real property and the improvements thereto (the "Property") to the Corporation pursuant to a Ground Lease, dated as of the date hereof, and the County will sublease the Property back from the Corporation pursuant to this Lease Agreement;

**WHEREAS**, the County and the Corporation have determined that it would be in the best interests of the County and the Corporation to provide the funds necessary to prepay lease payments to be made by the County pursuant to the Prior Lease Agreement through the sale and delivery of County of Monterey Certificates of Participation (2017 Public Facilities Refunding), evidencing direct, fractional undivided interests in the base rental payments to be made by the County under this Lease Agreement; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease Agreement, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Trust Agreement.

**“Additional Rental Payments”** means all amounts payable by the County as Additional Rental Payments pursuant to Section 3.03 hereof.

**“Assignment Agreement”** means the Assignment Agreement, dated as of August 1, 2017, by and between the Corporation and U.S. Bank National Association, as Trustee.

**“Authorized County Representative”** means the County Administrative Officer of the County, the Auditor-Controller of the County, the Treasurer of the County and any other Person authorized by the Board of Supervisors of the County to act on behalf of the County under or with respect to this Lease Agreement.

**“Base Rental Deposit Date”** means the second Business Day next preceding each Interest Payment Date.

**“Base Rental Payment Schedule”** means the schedule of Base Rental Payments payable by the County pursuant to Section 3.02 hereof and attached hereto as Exhibit B.

**“Base Rental Payments”** means all amounts payable to the Corporation from the County as Base Rental Payments pursuant to Section 3.02 hereof.

**“Certificates”** means the County of Monterey Certificates of Participation (2017 Public Facilities Refunding) executed and delivered by the Trustee pursuant to the Trust Agreement.

**“Code”** means the Internal Revenue Code of 1986.

**“Corporation”** means the County of Monterey Public Improvement Corporation, a nonprofit public benefit corporation organized and existing under the laws of the State, and its successors.

**“County”** means the County of Monterey, a county and political subdivision of the State organized and existing under the laws of the State, and its successors.

**“Delivery Date”** means October 5, 2017.

**“Event of Default”** means, with respect to this Lease Agreement, any event or circumstance specified in 7.01 hereof as an Event of Default.

**“Fair Rental Value”** means, with respect to the Property, the annual fair rental value thereof.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the County.

**“Ground Lease”** means the Ground Lease, dated as of August 1, 2017, by and between the County and the Corporation, as originally executed and as it may from time to time be amended in accordance with the provisions thereof and of the Lease Agreement.

**“Independent Insurance Consultant”** means a nationally recognized independent actuary, insurance company or broker that has actuarial personnel experienced in the area of insurance for which the County is to be self-insured, as may from time to time be designated by the County.

**“Interest Payment Date”** means April 1 and October 1 of each year commencing April 1, 2018.

**“Lease Agreement”** means this Lease Agreement, dated as of August 1, 2017, by and between the County and the Corporation, as the same may be amended or supplemented pursuant to the provisions hereof.

**“Net Proceeds”** means any insurance proceeds or condemnation award in excess of \$50,000, paid with respect to any of the Property, remaining after payment therefrom of all reasonable expenses incurred in the collection thereof.

**“Outstanding”** has the meaning ascribed to such term in the Trust Agreement.

**“Permitted Encumbrances”** means with respect to the Property, as of any particular time (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the County may, pursuant to provisions of Section 6.06 hereof, permit to remain unpaid, (b) this Lease Agreement, (c) the Ground Lease, (d) the Assignment Agreement, (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law as normally exist with respect to properties similar to the Property for the purposes for which it was acquired or is held by the County, (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Delivery Date, and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Delivery Date which the County certifies in writing do not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Certificates by the Trust Agreement.

**“Prior Lease”** means a Lease Agreement, dated as of May 1, 2007, by and between the County and the Corporation.

**“Property”** means the real property described in Exhibit A hereto, and any improvements thereto, subject to the provisions of Section 8.03 hereof relating to the substitution or release of the Property.

**“Refunded Certificates”** means the County of Monterey Certificates of Participation (2007 Refunding and Public Facilities Financing) executed and delivered pursuant to a Trust Agreement, dated as of May 1, 2007, by and among the County, the Corporation and the 2007 Trustee.

**“Rental Payments”** means, collectively, the Base Rental Payments and the Additional Rental Payments.

**“Rental Period”** means the period from the Delivery Date through June 30, 2018 and, thereafter, the twelve-month period commencing on July 1 of each year during the term of this Lease Agreement.

**“Scheduled Termination Date”** means October 1, 2036.

**“State”** means the State of California.

**“Trust Agreement”** means the Trust Agreement, dated as of August 1, 2017, by and among U.S. Bank National Association, as Trustee, the Corporation and the County, as originally executed and as it may from time to time be modified or amended by any Supplemental Trust Agreement.

**“Trustee”** means U.S. Bank National Association, as trustee under the Trust Agreement, or any successor thereto as trustee thereunder, substituted in its place as provided therein.

**“Written Certificate”** and **“Written Request”** of the County mean, respectively, a written certificate or written request signed in the name of the County by an Authorized County Representative. Any such request may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**“2007 Trustee”** means U.S. Bank National Association and any successor in interest thereto.

## ARTICLE II

### LEASE OF PROPERTY; TERM

**Section 2.01. Lease of Property.** (a) The Corporation hereby leases to the County and the County hereby leases from the Corporation the Property, on the terms and conditions hereinafter set forth, and subject to all Permitted Encumbrances.

(b) The leasing of the Property by the County to the Corporation pursuant to the Ground Lease shall not effect or result in a merger of the County’s leasehold estate in the Property as lessee under this Lease Agreement and its leasehold or fee estate, as applicable, in

the Property as lessor under the Ground Lease, and the Corporation shall continue to have a leasehold estate in the Property pursuant to the Ground Lease throughout the term thereof and hereof. This Lease Agreement shall constitute a sublease with respect to the Property. The leasehold interest in the Property granted by the County to the Corporation pursuant to the Ground Lease is and shall be independent of this Lease Agreement; this Lease Agreement shall not be an assignment or surrender of the leasehold interest in the Property granted to the Corporation under the Ground Lease.

**Section 2.02. Occupancy; Term.** (a) The County shall take possession of the Property on the Delivery Date.

(b) The term of this Lease Agreement shall commence on the Delivery Date and shall end on the Scheduled Termination Date, unless such term is extended or sooner terminated as provided herein.

(c) If all of the Property shall be taken under the power of eminent domain, and the County does not elect to cause alternate real property to be substituted for all or a portion of the Property pursuant to, and in accordance with the provisions of, Section 8.03 hereof, as provided in clause (i) of Section 5.07(c) hereof but, rather, elects to deliver or cause to be delivered any award made in eminent domain proceedings for such taking to the Trustee for the application to the prepayment, pursuant to Section 4.01(a) of the Trust Agreement, of all or a portion of the Outstanding Certificates, as provided in clause (ii) of Section 5.07(c) hereof, then, on the date that possession thereof shall be so taken, the term of this Lease Agreement shall terminate.

(d) If, prior to the Scheduled Termination Date, all Certificates shall be fully paid, or deemed paid in accordance with Article X of the Trust Agreement, then, on the date of such payment or deemed payment, the term of this Lease Agreement shall terminate.

(e) If on the Scheduled Termination Date, the Rental Payments payable hereunder shall have been abated at any time and for any reason, then the term of this Lease Agreement shall be extended until the date upon which all such Rental Payments shall have been paid in full, except that the term of this Lease Agreement shall in no event be extended more than ten years beyond the Scheduled Termination Date.

(f) Upon the termination of the term of this Lease Agreement (other than as provided in Section 7.01 hereof), and the first date upon which the Certificates are no longer Outstanding, all right, title and interest in and to the Property shall vest in the County. Upon any such termination or expiration, the Corporation shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

### ARTICLE III

#### RENTAL PAYMENTS

**Section 3.01. Rental Payments.** (a) Rental Payments, consisting of Base Rental Payments and Additional Rental Payments, shall be paid by the County to the Corporation for and in consideration of the right to use and occupy the Property and in consideration of the

continued right to the quiet use and enjoyment thereof during each Rental Period for which such Rental Payments are to be paid.

(b) The obligation of the County to make the Rental Payments, including the Base Rental Payments, does not constitute a debt of the County or of the State or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the County or the State is obligated to levy or pledge any form of taxation or for which the County or the State has levied or pledged any form of taxation.

(c) If the term of this Lease Agreement shall have been extended pursuant to Section 2.02 hereof, the obligation of the County to pay Rental Payments shall continue to and including the Base Rental Deposit Date preceding the date of termination of this Lease Agreement, as so extended.

**Section 3.02. Base Rental Payments.** (a) The County, subject to the provisions of Section 3.07 hereof, shall pay Base Rental Payments to the Corporation in the amounts at the times specified in the Base Rental Payment Schedule. A portion of the Base Rental Payments shall constitute principal components and a portion of the Base Rental Payments shall constitute interest components, as specified in the Base Rental Payment Schedule. The interest components of the Base Rental Payments shall be paid by the County as and constitute interest paid on the principal components of the Base Rental Payments.

(b) If the term of this Lease Agreement shall have been extended pursuant to Section 2.02 hereof, the obligation of the County to pay Rental Payments shall continue to and including the date of termination of this Lease Agreement as so extended. Upon such extension, the principal and interest components of the Base Rental Payments shall be established so that the principal components will in the aggregate be sufficient to pay all extended and unpaid principal components and the interest components will in the aggregate be sufficient to pay all extended and unpaid interest components; provided, however, that the Rental Payments payable in any Rental Period shall not exceed the annual fair rental value of the Property.

**Section 3.03. Additional Rental Payments.** (a) The County shall also pay, as Additional Rental Payments, such amounts as shall be required for the payment of the following:

(i) all taxes and assessments of any type or nature charged to the Corporation or the County or affecting the Property or the respective interests or estates of the Corporation or the County therein;

(ii) insurance premiums for all insurance required pursuant to Article V hereof; and

(iii) all other payments not constituting Base Rental Payments required to be paid by the County pursuant to the provisions of this Lease Agreement.

(b) Amounts constituting Additional Rental Payments payable hereunder shall be paid by the County directly to the person or persons to whom such amounts shall be payable. The County shall pay all such amounts when due or at such later time as such amounts may be

paid without penalty or, in any other case, within 60 days after notice in writing from the Corporation to the County stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

**Section 3.04. Fair Rental Value.** The parties hereto have agreed and determined that the Fair Rental Value of the Property is not less than \$7,900,000 as of the Delivery Date. In making such determination of Fair Rental Value, consideration has been given to the uses and purposes which may be served by the Property and the benefits therefrom that will accrue to the County and the general public. Payments of the Rental Payments for the Property during each Rental Period shall constitute the total rental for said Rental Period.

**Section 3.05. Payment Provisions.** Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Trustee, as the assignee of the Corporation at the Principal Office of the Trustee, or such other place or entity as the Trustee shall designate. Each Base Rental Payment shall be deposited with the Trustee, as the assignee of the Corporation, no later than the Base Rental Deposit Date preceding the Interest Payment Date on which such Base Rental Payment is due. Any Base Rental Payment which shall not be paid by the County when due and payable under the terms of this Lease Agreement shall bear interest from the date when the same is due hereunder until the same shall be paid a rate equal to the highest rate of interest evidenced by any of the Outstanding Certificates. Notwithstanding any dispute between the Corporation and the County, the County shall make all Rental Payments when due without deduction or offset of any kind and shall not withhold any Rental Payments pending the final resolution of such dispute. In the event of a determination that the County was not liable for said Rental Payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent Rental Payments due hereunder or refunded at the time of such determination. Amounts required to be deposited by the County with the Trustee pursuant to this Section on any date shall be reduced to the extent of available amounts on deposit in the Base Rental Payment Fund, the Interest Fund or the Principal Fund.

**Section 3.06. Appropriations Covenant.** The County shall take such action as may be necessary to include all Rental Payments due hereunder as a separate line item in its annual budgets and supplemental or revised budgets and to make necessary annual appropriations for all such Rental Payments. The covenants on the part of the County herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the County.

**Section 3.07. Rental Abatement.** (a) Except as otherwise specifically provided in this Section, during any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the County's right to use and occupy any portion of the Property, Rental Payments shall be abated proportionately, and the County waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Lease Agreement by virtue of any such interference, and this Lease Agreement shall continue in full

force and effect. The County and the Corporation shall, in a reasonable manner and in good faith, determine the amount of such abatement; provided, however, that the Rental Payments due for any Rental Period shall not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the County during such Rental Period. Such abatement shall continue for the period commencing with the date of interference resulting from such damage, destruction, condemnation or title defect and, with respect to damage to or destruction of the Property, ending with the substantial completion of the work of repair or replacement of the Property, or the portion thereof so damaged or destroyed.

(b) Notwithstanding the foregoing, to the extent that Net Proceeds of rental interruption insurance are available for the payment of Rental Payments, Rental Payments shall not be abated as provided in subsection (a) of this Section but, rather, shall be payable by the County as a special obligation payable solely from such Net Proceeds.

**Section 3.08. Prepayment.** (a) The County may prepay all or a portion of the Base Rental Payments which are payable on or after October 1, 2028, from any source of available funds, on any date on or after October 1, 2027, by paying (i) all or a portion, as elected by the County, of the principal components of such Base Rental Payments, and (ii) the accrued but unpaid interest component of such Base Rental Payments to be prepaid to the date of such prepayment, without premium.

(b) The County may prepay, from any source of available funds, all or any portion of the Base Rental Payments by depositing with the Trustee moneys or securities as provided, and subject to the terms and conditions set forth, in Article X of the Trust Agreement sufficient to make such Base Rental Payments when due or to make such Base Rental payments through a specified date on which the County has a right to prepay such Base Rental Payments pursuant to subsection (a) of this Section, and to prepay such Base Rental Payments on such prepayment date, at a prepayment price determined in accordance with subsection (a) of this Section.

(c) If less than all of the Base Rental Payments are prepaid pursuant to this Section then, as of the date of such prepayment pursuant to subsection (a) of this Section, or the date of a deposit pursuant to subsection (b) of this Section, the principal and interest components of the Base Rental Payments shall be recalculated in order to take such prepayment into account, which recalculated amounts the County shall provide to the Trustee in a Written Certificate of the County. The County agrees that if, following a partial prepayment of Base Rental Payments, the Property is damaged or destroyed or taken by eminent domain, or a defect in title to the Property is discovered, the County shall not be entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and the County shall not be entitled to any reimbursement of such Base Rental Payments.

(d) If all of the Base Rental Payments are prepaid in accordance with the provisions of this Lease Agreement then, as of the date of such prepayment pursuant to subsection (a) of this Section, or deposit pursuant to subsection (b) of this Section, the term of this Lease Agreement shall be terminated.

(e) Prepayments of Base Rental Payments made pursuant to this Section shall be applied to the prepayment of Certificates as provided in Section 4.01(a) of the Trust Agreement.

(f) Before making any prepayment pursuant to this Article, the County shall give written notice to the Trustee specifying (i) the portion, which may be all, of the principal component of each Base Rental Payment to be prepaid, and (ii) the date on which the prepayment will be made, which date shall be not less than 45 days prior to the prepayment date, unless such notice shall be waived by the Trustee.

#### ARTICLE IV

#### QUIET ENJOYMENT; MAINTENANCE; ALTERATIONS; LIENS

**Section 4.01. Quiet Enjoyment.** The parties hereto mutually covenant that the County, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Lease Agreement peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from the Corporation.

**Section 4.02. Net-Net-Net Lease.** This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the County hereby agrees that the Rental Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever and notwithstanding any dispute between the County and the Corporation.

**Section 4.03. Right of Entry.** The Corporation shall have the right to enter upon and to examine and inspect the Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the Corporation's rights or obligations under this Lease Agreement, and for all other lawful purposes.

**Section 4.04. Maintenance and Utilities.** Throughout the term of this Lease Agreement, as part of the consideration for rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the County, and the County shall pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the County or any assignee or sublessee thereof. In exchange for the Rental Payments, the Corporation agrees to provide only the Property.

**Section 4.05. Additions to Property.** Subject to Section 4.07 hereof, the County and any sublessee shall, at its own expense, have the right to make additions, modifications and improvements to the Property. To the extent that the removal of such additions, modifications or improvements would not cause material damage to the Property, such additions, modifications and improvements shall remain the sole property of the County or such sublessee, and the Corporation shall not have any interest therein. Such additions, modifications and improvements shall not in any way damage the Property or cause it to be used for purposes other than those

authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such additions, modifications and improvements.

**Section 4.06. Installation of County's Equipment.** The County and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the County or such sublessee, and the Corporation shall have no interest therein. The County or such sublessee may remove or modify such equipment or other personal property at any time, provided that such party shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items; and the Property, upon completion of any installations, modifications or removals made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such installations, modifications or removals. Nothing in this Lease Agreement shall prevent the County or any sublessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

**Section 4.07. Mechanics', Etc. Liens.** In the event the County shall at any time during the term of this Lease Agreement cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Property, the County shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the County in, upon or about the Property and which may be secured by a mechanics', materialmen's or other lien against the Property or the Corporation's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that, if the County desires to contest any such lien, it may do so as long as such contest is in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the County shall forthwith pay and discharge said judgment.

**Section 4.08. Other Liens.** The County shall keep the Property and all parts thereof free from judgments and materialmen's and mechanics' liens and free from all claims, demands, encumbrances and other liens of whatever nature or character, and free from any claim or liability which materially impairs the County in conducting its business or utilizing the Property, and the Corporation at its option (after first giving the County ten days' written notice to comply therewith and failure of the County to so comply within such ten-day period) may defend against any and all actions or proceedings, or may pay or compromise any claim or demand asserted in any such actions or proceedings; provided, however, that, in defending against any such actions or proceedings or in paying or compromising any such claims or demands, the Corporation shall not in any event be deemed to have waived or released the County from liability for or on account of any of its agreements and covenants contained herein, or from its obligation hereunder to perform such agreements and covenants. The Corporation shall have no liability

with respect to any determination made in good faith to proceed or decline to defend, pay or compromise any such claim or demand.

## ARTICLE V

### INSURANCE; NET PROCEEDS; EMINENT DOMAIN

**Section 5.01. Public Liability and Property Damage Insurance; Workers' Compensation Insurance.** (a) The County shall maintain or cause to be maintained, throughout the term of this Lease Agreement, a standard comprehensive general liability insurance policy or policies in protection of the County, the Corporation and their respective board members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or ownership of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$100,000) resulting from a single accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the County. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid. The County's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 5.04 hereof.

(b) The County shall maintain or cause to be maintained casualty insurance insuring the Property against fire, lightning and all other risks covered by an extended coverage endorsement (excluding earthquake and flood) to the full insurable value of the Property, subject to a \$100,000 loss deductible provision. Full insurable value shall not be less than the aggregate amount of principal evidenced by the Outstanding Certificates. The Net Proceeds of such casualty insurance shall be applied as provided in Section 5.05 hereof. The County's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 5.04 hereof.

(c) The County shall maintain rental interruption insurance to cover the Corporation's loss, total or partial, of Base Rental Payments resulting from the loss, total or partial, of the use of any part of the Property as a result of any of the hazards required to be covered pursuant to subsection (b) of this Section in an amount not less than the product of two times the maximum amount of Base Rental Payments scheduled to be paid during any Rental Period. The Net Proceeds of such rental interruption insurance shall be applied to the payment of Rental Payments during the period in which, as a result of the damage or destruction to the Property that resulted in the receipt of such Net Proceeds, there is substantial interference with the County's right to the use or occupancy of the Property. The County's obligations under this subsection may not be satisfied by self-insurance.

(d) The insurance required by this Section shall be provided by reputable insurance companies with claims paying abilities determined, in the reasonable opinion of the County's professionally certified risk manager or an Independent Insurance Consultant, to be adequate for the purposes hereof.

**Section 5.02. Title Insurance.** The County shall provide, at its own expense, one or more CLTA title insurance policies for the Property, in the aggregate amount of not less than the aggregate amount of principal evidenced by the Outstanding Certificates. Said policy or policies shall insure (a) the fee interest of the County in the Property (b) the Corporation's ground leasehold estate in the Property under the Ground Lease, and (c) the County's leasehold estate hereunder in the Property, subject only to Permitted Encumbrances; provided, however, that one or more of said estates may be insured through an endorsement to such policy or policies. The Net Proceeds of such title insurance shall be applied as provided as provided in Section 5.06 hereof.

**Section 5.03. Additional Insurance Provision; Form of Policies.** (a) The County shall pay or cause to be paid when due the premiums for all insurance policies required by Section 5.01 hereof. All such policies shall contain a standard lessee clause in favor of the Trustee and the general liability insurance policies shall be endorsed to show the Trustee as an additional insured. All such policies shall provide that the Trustee shall be given 30 days' notice of the expiration thereof, any intended cancellation thereof or any reduction in the coverage provided thereby. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(b) The County shall cause to be delivered to the Trustee, on or before August 15 of each year, commencing August 15, 2018, a schedule of the insurance policies being maintained in accordance herewith and a Written Certificate of the County stating that such policies are in full force and effect and that the County is in full compliance with the requirements of this Article. The Trustee shall be entitled to rely upon said Written Certificate of the County as to the County's compliance with this Article. The Trustee shall not be responsible for the sufficiency of coverage or amounts of such policies.

**Section 5.04. Self-Insurance.** Any self-insurance maintained by the County pursuant to this Article shall comply with the following terms:

(a) the self-insurance program shall be approved in writing by the County's professionally certified risk manager or by an Independent Insurance Consultant;

(b) the self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid, the adequacy of each such fund shall be evaluated on a bi-annual basis by the County's professionally certified risk manager or by an Independent Insurance Consultant and any deficiencies in any self-insured claims reserve fund shall be remedied in accordance with the recommendation of the County's professionally certified risk manager or such Independent Insurance Consultant, as applicable; and

(c) in the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the County's professionally certified risk manager or by an Independent Insurance Consultant, shall be maintained.

**Section 5.05. Damage or Destruction.** (a) If the Property or any portion thereof shall be damaged or destroyed, the County shall, within 30 days of the occurrence of the event of damage or destruction, notify the Trustee in writing of the County's determination as to whether or not such damage or destruction will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof.

(b) If the County determines that such damage or destruction will not result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, the County shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof.

(c) If the County determines that such damage or destruction will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, then the County shall (i) apply sufficient funds from the Net Proceeds of any insurance (other than Net Proceeds of rental interruption insurance), including the proceeds of any self-insurance, received on account of such damage or destruction and other legally available funds to the repair or replacement of the Property or the portions thereof which have been damaged or destroyed to the condition that existed prior to such damage or destruction, provided that, within 40 days of the occurrence of the event of damage or destruction, the County delivers to the Trustee a Written Certificate of the County (A) certifying that the County has sufficient funds to so complete such repair or replacement of the Property or such portions thereof and identifying such funds and the location thereof, and (B) stating that such funds will not be used for any other purpose until such repair or replacement is completed, (ii) within 60 days of the occurrence of the event of damage or destruction, cause alternate real property to be substituted for all or a portion of the Property pursuant to, and in accordance with the provisions of, Section 8.03 hereof, or (iii) within 60 days of the occurrence of the event of damage or destruction, deliver sufficient funds from such Net Proceeds and other legally available funds to the Trustee for the application to the prepayment, pursuant to Section 4.01(a) of the Trust Agreement (A) of all of the Outstanding Certificates, or (B) of such portion of the Outstanding Certificates as shall result in (I) the annual fair rental value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction, as certified in a Written Certificate of the County delivered to the Trustee, being at least equal to 105% of the maximum amount of the Base Rental Payments coming due in the then current Rental Period or any subsequent Rental Period, and (II) the fair replacement value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction, as certified in a Written Certificate of the County delivered to the Trustee, being at least equal to the aggregate amount of principal evidenced by the Certificates then Outstanding.

**Section 5.06. Title Insurance.** (a) If a defect in title to the Property results in the creation of a right to receive Net Proceeds under any policy of title insurance with respect to the

Property or any portion thereof, the County shall, within 30 days of the creation of such right, notify the Trustee in writing of the County's determination as to whether or not such title defect will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof.

(b) If the County determines that such title defect will not result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, such Net Proceeds shall be remitted to the County and used for any lawful purpose thereof.

(c) If the County determines that such title defect will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, then the County shall (i) within 60 days of the creation of such right to receive such Net Proceeds, cause alternate real property to be substituted for all or a portion of the Property pursuant to, and in accordance with the provisions of, Section 8.03 hereof, or (ii) immediately upon receipt thereof, deliver or cause to be delivered such Net Proceeds to the Trustee for the application to the prepayment, pursuant to Section 4.01(a) of the Trust Agreement, of all or a portion of the Outstanding Certificates.

**Section 5.07. Eminent Domain.** (a) If all or a portion of the Property shall be taken under the power of eminent domain, the County shall, no later than 45 days prior to the day that possession thereof shall be so taken, notify the Trustee in writing of the County's determination as to whether or not such taking will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof.

(b) If the County determines that such taking will not result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, any award made in eminent domain proceedings for such taking shall be remitted to the County and used for any lawful purpose thereof.

(c) If the County determines that such taking will result in a substantial interference with the County's right to the use or occupancy of the Property and an abatement in whole or in part of Rental Payments pursuant to Section 3.07 hereof, then the County shall (i) no later than 45 days prior to the day that possession thereof shall be so taken, cause alternate real property to be substituted for all or a portion of the Property pursuant to, and in accordance with the provisions of, Section 8.03 hereof, or (ii) immediately upon receipt thereof, deliver or cause to be delivered any award made in eminent domain proceedings for such taking to the Trustee for the application to the prepayment, pursuant to Section 4.01(a) of the Trust Agreement, of all or a portion of the Outstanding Certificates.

## ARTICLE VI

### REPRESENTATIONS; COVENANTS

**Section 6.01. Representations of the County.** The County represents and warrants (a) that the County has the full power and authority to enter into, to execute and to deliver this Lease Agreement and the Trust Agreement and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement and the Trust Agreement, and (b) the Property will be used in the performance of essential governmental functions.

**Section 6.02. Representation of the Corporation.** The Corporation represents and warrants that the Corporation has the full power and authority to enter into, to execute and to deliver this Lease Agreement and the Trust Agreement, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement and the Trust Agreement.

**Section 6.03. Recordation.** The County shall record, or cause to be recorded, with the appropriate county recorder, the Lease Agreement, the Ground Lease and the Assignment Agreement, or memoranda thereof.

**Section 6.04. Use of the Property.** The County will not use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease Agreement. In addition, the County agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Property) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Property; provided, however, that the County may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Corporation, adversely affect the estate of the Corporation in and to any of the Property or its interest or rights under this Lease Agreement.

**Section 6.05. Other Liens.** The County shall keep the Property and all parts thereof free from judgments and materialmen's and mechanics' liens and free from all claims, demands, encumbrances and other liens of whatever nature or character, and free from any claim or liability which materially impairs the County in conducting its business or utilizing the Property, and the Corporation at its option (after first giving the County ten days' written notice to comply therewith and failure of the County to so comply within such ten-day period) may defend against any and all actions or proceedings, or may pay or compromise any claim or demand asserted in any such actions or proceedings; provided, however, that, in defending against any such actions or proceedings or in paying or compromising any such claims or demands, the Corporation shall not in any event be deemed to have waived or released the County from liability for or on account of any of its agreements and covenants contained herein, or from its obligation hereunder to perform such agreements and covenants. The Corporation shall have no liability with respect to any determination made in good faith to proceed or decline to defend, pay or compromise any such claim or demand.

**Section 6.06. Taxes.** (a) The County shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Corporation or affecting the Property or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid during the term of this Lease Agreement as and when the same become due.

(b) After giving notice to the Corporation, the County or any sublessee may, at the County's or such sublessee's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the County or such sublessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property, or any part thereof, will be subject to loss or forfeiture, in which event the County or such sublessee shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

**Section 6.07. No Liability; Indemnification.** (a) The Corporation and its directors, officers, agents and employees, shall not be liable to the County or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Property. To the extent permitted by law, the County shall, at its expense, indemnify and hold the Corporation and the Trustee and all directors, members, officers, employees and agents thereof harmless against and from any and all claims by or on behalf of Person arising from the acquisition, construction, occupation, use, operation, maintenance, possession, conduct or management of or from any work done in or about the Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Property or the occupancy or use thereof, but excepting the negligence or willful misconduct of the persons or entity seeking indemnity. The County also covenants and agrees, at its expense, to pay and indemnify and save the Corporation and the Trustee and all directors, officers, employees and agents thereof harmless against and from any and all claims arising from (i) any condition of the Property and the adjoining sidewalks and passageways, (ii) any breach or default on the part of the County in the performance of any covenant or agreement to be performed by the County pursuant to this Lease Agreement, (iii) any act or negligence of licensees in connection with their use, occupancy or operation of the Property, or (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation in or about the Property or upon or under the sidewalks and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section, but excepting the negligence or willful misconduct of the person or entity seeking indemnity. In the event that any action or proceeding is brought against the Corporation or the Trustee or any director, member, officer or employee thereof, by reason of any such claim, the County, upon notice from the Corporation or the Trustee or such director, member, officer or employee thereof, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to the Corporation or the Trustee or such director, member, officer or employee thereof.

(b) In no event shall the Corporation be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease Agreement or the County's use of the Property.

**Section 6.08. Further Assurances.** The County shall make, execute and deliver any and all such further agreements, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Lease Agreement and for the better assuring and confirming unto the Corporation of the rights and benefits provided in this Lease Agreement.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01. Events of Defaults and Remedies.** (a) If (i) the County shall fail (A) to pay any Rental Payment payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence in this Lease Agreement, or (B) to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the County, if such failure to so keep, observe or perform shall have continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the County by the Corporation, the Trustee, or the Owners of not less than 5% of the aggregate amount of principal evidenced by the Certificates at the time Outstanding; provided, however, that if the failure stated in the notice can be corrected, but not within such 30 day period, such failure shall not constitute an Event of Default hereunder if corrective action is instituted by the County within such 30 day period and the County shall thereafter diligently and in good faith cure such failure in a reasonable period of time, which period, unless otherwise consented to by the Corporation, shall not exceed 180 days after written notice thereof shall have been given to the County, (ii) the County's interest in this Lease Agreement or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Corporation, (iii) the County shall commence a voluntary case under Title 11 of the United States Code or any substitute or successor statute, or (iv) the County shall fail to observe and perform any of the covenants, agreements or conditions on its part in the Trust Agreement contained, if such failure shall have continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the County by the Corporation or the Owners of not less than 5% of the aggregate amount of principal evidenced by the Certificates at the time Outstanding; provided, however, that if the failure stated in the notice can be corrected, but not within such 30 day period, such failure shall not constitute an Event of Default hereunder if corrective action is instituted by the County within such 30 day period and the County shall thereafter diligently and in good faith cure such failure in a reasonable period of time, which period, unless otherwise consented to by the Corporation, shall not exceed 180 days after written notice thereof shall have been given to the County, then such failure or event shall constitute an Event of Default under this Lease Agreement.

(b) Upon the occurrence of any Event of Default hereunder, the Corporation, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(i) To terminate this Lease Agreement in the manner hereinafter provided on account of such Event of Default, notwithstanding any re-entry or re-letting of the Property as hereinafter provided for in subparagraph (ii) hereof, and to re-enter the Property and remove all persons in possession thereof and all personal property whatsoever situated upon the Property and place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the County. In the event of such termination, the County agrees to surrender immediately possession of the Property, without let or hindrance, and to pay the Corporation all damages recoverable at law that the Corporation may incur by reason of such Event of Default, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Property and removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay Rental Payments or to deliver up possession of the Property given pursuant to law nor any entry or re-entry by the Corporation nor any proceeding in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property nor the appointment of a receiver upon initiative of the Corporation to protect the Corporation's interest under this Lease Agreement shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of an Event of Default hereunder shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Corporation shall have given written notice to the County of the election on the part of the Corporation to terminate this Lease Agreement. The County covenants and agrees that no surrender of the Property or of the remainder of the term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated by the Corporation by such written notice.

(ii) Without terminating this Lease Agreement, (A) to collect each installment of Rental Payments as the same become due and enforce any other terms or provisions hereof to be kept or performed by the County, regardless of whether or not the County has abandoned the Property, or (B) to exercise any and all rights of entry and re-entry upon the Property. In the event the Corporation does not elect to terminate this Lease Agreement in the manner provided for in subparagraph (i) hereof, the County shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the County and, if the Property is not re-let, to pay the full amount of the Rental Payments to the end of the term of this Lease Agreement or, in the event that the Property is re-let, to pay any deficiency in Rental Payments that results therefrom; and further agrees to pay said Rental Payments and/or Rental Payment deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of Rental Payments hereunder, notwithstanding the fact that the Corporation may have received in previous years or may receive thereafter in subsequent years Rental Payments in excess of the Rental Payments herein specified, and notwithstanding any entry or re-entry by the Corporation or suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property. Should the Corporation elect to re-enter as herein provided, the County hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the County to re-let the Property, or any part thereof, from time to

time, either in the Corporation's name or otherwise, upon such terms and conditions and for such use and period as the Corporation may deem advisable and to remove all persons in possession thereof and all personal property whatsoever situated upon the Property and to place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the County, and the County hereby indemnifies and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Property and removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The County agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-let the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-letting shall constitute a surrender or termination of this Lease Agreement irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, upon the occurrence of an Event of Default hereunder, the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner provided for in subparagraph (i) hereof. The County further agrees to pay the Corporation the cost of any alterations or additions to the Property necessary to place the Property in condition for re-letting immediately upon notice to the County of the completion and installation of such additions or alterations.

The County hereby waives any and all claims for damages caused or which may be caused by the Corporation in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the County, or any other person, that may be in or upon the Property.

(c) In addition to the other remedies set forth in this Section, upon the occurrence of an Event of Default hereunder, the Corporation shall be entitled to proceed to protect and enforce the rights vested in the Corporation by this Lease Agreement or by law. The provisions of this Lease Agreement and the duties of the County and of its board, officers or employees shall be enforceable by the Corporation by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Corporation shall have the right to bring the following actions:

(i) *Accounting.* By action or suit in equity to require the County and its board, officers and employees and its assigns to account as the trustee of an express trust.

(ii) *Injunction.* By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Corporation.

(iii) *Mandamus.* By mandamus or other suit, action or proceeding at law or in equity to enforce the Corporation's rights against the County (and its board, officers and employees) and to compel the County to perform and carry out its duties and

obligations under the law and its covenants and agreements with the County as provided herein.

(d) Each and all of the remedies given to the Corporation hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Corporation to the further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Corporation of the Property. If any statute or rule of law validly shall limit the remedies given to the Corporation hereunder, the Corporation nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

(e) In the event the Corporation shall prevail in any action brought to enforce any of the terms and provisions of this Lease Agreement, the County agrees to pay a reasonable amount as and for attorney's fees incurred by the Corporation in attempting to enforce any of the remedies available to the Corporation hereunder.

(f) Notwithstanding anything to the contrary contained in this Lease Agreement, the Corporation shall have no right upon a default by the County hereunder, an Event of Default hereunder or otherwise to accelerate Rental Payments.

(g) Notwithstanding anything herein to the contrary, the termination of this Lease Agreement by the Corporation on account of an Event of Default hereunder shall not effect or result in a termination of the lease of the Property by the County to the Corporation pursuant to the Ground Lease.

**Section 7.02. Waiver.** Failure of the Corporation to take advantage of any default on the part of the County shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Corporation to insist upon performance by the County of any term, covenant or condition hereof, or to exercise any rights given the Corporation on account of such default. A waiver of a particular default shall not be deemed to be a waiver of any other default or of the same default subsequently occurring. The acceptance of Rental Payments hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Lease Agreement.

## ARTICLE VIII

### AMENDMENTS; ASSIGNMENT AND SUBLEASING; SUBSTITUTION OR RELEASE

**Section 8.01. Amendments.** (a) This Lease Agreement and the Ground Lease, and the rights and obligations of the Corporation and the County hereunder and thereunder, may be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the County and the Corporation, but only with the prior written consent of the Owners of a majority of the aggregate amount of principal evidenced by the Certificates then Outstanding, provided that no such amendment shall (i) extend the payment date of any Base

Rental Payment or reduce any Base Rental Payment, without the prior written consent of the Owner of each Certificate so affected, or (ii) reduce the percentage of the aggregate amount of principal evidenced by the Certificates then Outstanding, the consent of the Owners of which is required for the execution of any amendment of this Lease Agreement or the Ground Lease, without the prior written consent of the Owners of all the Certificates then Outstanding.

(b) This Lease Agreement and the Ground Lease, and the rights and obligations of the County and the Corporation hereunder and thereunder, may also be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the County and the Corporation, without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the agreements, conditions, covenants and terms required by the Corporation or the County to be observed or performed herein or therein other agreements, conditions, covenants and terms thereafter to be observed or performed by the Corporation or the County, or to surrender any right or power reserved herein or therein to or conferred herein or therein on the Corporation or the County;

(ii) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or therein or in regard to questions arising hereunder or thereunder which the Corporation or the County may deem desirable or necessary and not inconsistent herewith or therewith, and which shall not materially adversely affect the rights or interests of the Owners;

(iii) to make such additions, deletions or modifications as may be necessary or appropriate to assure the exclusion from gross income for federal income tax purposes of interest evidenced by the Certificates;

(iv) to provide for the substitution or release of a portion of the Property in accordance with the provisions of Section 8.03 hereof;

(v) to provide for Additional Certificates pursuant to Sections 2.11 and 2.12 of the Trust Agreement; or

(vi) to make such other changes herein or therein or modifications hereto or thereto as the Corporation or the County may deem desirable or necessary, and which shall not materially adversely affect the interests of the Owners.

**Section 8.02. Assignment and Subleasing.** Neither this Lease Agreement nor any interest of the County hereunder shall be sold, mortgaged, pledged, assigned or transferred by the County by voluntary act or by operation of law or otherwise; provided, however, that the Property may be subleased in whole or in part by the County, provided that any such sublease shall be subject to all of the following conditions:

(a) this Lease Agreement and the obligation of the County to make all Rental Payments hereunder shall remain the primary obligation of the County;

(b) the County shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation a true and complete copy of such sublease;

(c) any sublease of the Property by the County shall explicitly provide that such sublease is subject to all rights of the Corporation under this Lease Agreement, including, the right to re-enter and re-let the Property or terminate this Lease Agreement upon an Event of Default hereunder; and

(d) the County shall furnish the Corporation with an Opinion of Counsel to the effect that such sublease will not, in and of itself, cause the interest evidenced by the Certificates to be included in gross income for federal income tax purposes.

**Section 8.03. Substitution or Release of the Property.** The County shall have the right to substitute alternate real property for any portion of the Property or to release a portion of the Property from this Lease Agreement. All costs and expenses incurred in connection with such substitution or release shall be borne by the County. Notwithstanding any substitution or release pursuant to this Section, there shall be no reduction in or abatement of the Base Rental Payments due from the County hereunder as a result of such substitution or release. Any such substitution or release of any portion of the Property shall be subject to the following specific conditions, which are hereby made conditions precedent to such substitution or release:

(a) an independent certified real estate appraiser selected by the County shall have found (and shall have delivered a certificate to the County and the Corporation setting forth its findings) that the Property, as constituted after such substitution or release (i) has an annual fair rental value greater than or equal to 105% of the maximum amount of the Base Rental Payments coming due in the then current Rental Period or any subsequent Rental Period, (ii) has a replacement value at least equal to the aggregate amount of principal evidenced by the Certificates then Outstanding, and (iii) has a remaining useful life equal to or greater than the remaining term of this Lease Agreement;

(b) the County shall have obtained or caused to be obtained a CLTA title insurance policy or policies with respect to any substituted property in the amount of the fair market value of such substituted property (which fair market value shall have been determined by an independent certified real estate appraiser), of the type and with the endorsements described in Section 5.02 hereof;

(c) the County shall have certified to the Corporation that the substituted real property is of approximately the same degree of essentiality to the County as the portion of the Property for which it is being substituted;

(d) the County shall have provided the Corporation with an Opinion of Counsel to the effect that such substitution or release will not, in and of itself, cause the interest evidenced by the Certificates to be included in gross income for federal income tax purposes; and

(e) the County and the Corporation shall have executed, and the County shall have caused to be recorded with the Monterey County Recorder, any document necessary to reconvey to the County the portion of the Property being substituted or released and to include

any substituted real property in the description of the Property contained herein and in the Ground Lease.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.01. Assignment to Trustee.** The County understands and agrees that, upon the execution and delivery of the Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Corporation in and to this Lease Agreement (other than the Corporation's rights to indemnification and to payment or reimbursement of its reasonable costs and expenses hereunder) will be sold, assigned and transferred to the Trustee for the benefit of the Owners of the Certificates. The County hereby consents to such sale, assignment and transfer. Upon the execution and delivery of the Assignment Agreement, references in the operative provisions hereof to the Corporation shall be deemed to be references to the Trustee, as assignee of the Corporation.

**Section 9.02. Validity and Severability.** If for any reason this Lease Agreement shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Corporation or by the County, or if for any reason it is held by such a court that any of the covenants and conditions of the County hereunder, including the covenant to pay Rental Payments, is unenforceable for the full term hereof, then and in such event this Lease Agreement is and shall be deemed to be a Lease Agreement under which the Rental Payments are to be paid by the County annually in consideration of the right of the County to possess, occupy and use the Property, and all of the terms, provisions and conditions of this Lease Agreement, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

**Section 9.03. Notices.** All written notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the County: County of Monterey  
First Floor  
168 West Alisal Street  
Salinas, California 93901  
Attention: Treasurer

If to the Corporation: County of Monterey Public Improvement Corporation  
c/o County of Monterey  
Third Floor  
168 West Alisal Street  
Salinas, California 93901  
Attention: President

If to the Trustee: U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust Department

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, electronic mail or other electronic communication, upon the sender's receipt of an appropriate answerback or other written acknowledgment or electronic confirmation of receipt, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (d) if given by any other means, upon delivery at the address specified in this Section.

**Section 9.04. Interpretation.** (a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of Articles and Sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 9.05. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

**Section 9.06. Governing Laws.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 9.07. Execution in Counterparts.** This Lease Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**COUNTY OF MONTEREY PUBLIC  
IMPROVEMENT CORPORATION,**  
as Sublessor

By: Michael J. Miller  
President  
Michael J. Miller  
AKA Michael James Miller

**COUNTY OF MONTEREY,**  
as Sublessee

By: Lew Bauman  
County Administrative Officer  
Lew Bauman AKA Lew Cary  
Bauman

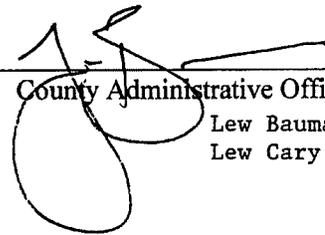




CERTIFICATE OF ACCEPTANCE  
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by the foregoing Lease Agreement from the County of Monterey Public Improvement Corporation to the County Monterey, a political subdivision of the State of California (the "County") is hereby accepted by order of the Board of Supervisors of the County of Monterey on October 5, 2017, and the County consents to recordation thereof by its duly authorized officer.

COUNTY OF MONTEREY,  
as Sublessee

By:  \_\_\_\_\_  
County Administrative Officer  
Lew Bauman, AKA  
Lew Cary Bauman

Attest:

By:  \_\_\_\_\_  
Clerk of the Board of Supervisors  
Gail T. Borkowski

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

**County Administration Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a portion of the lands of Monterey County and being a portion of that certain parcel of land designated as "A.P.N. 002-253-027" on that certain map entitled "Record of Survey of Blocks B5, B6, & B7 of Riker & Jackson Survey, and Block 10 of Stone's Addition", filed for record August 15, 2003, in Volume 26 of Surveys, at Page 98, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the easterly line of Capitol Street (a City Street, 60 feet wide) from which the southwesterly corner of said designated parcel bears S. 09° 22' 09" E., 191.26 feet distant; thence from said point of beginning and along said westerly line of Capitol Street

- 1) N. 09° 22' 09" W., 193.40 feet; thence leaving said easterly street line,
- 2) N. 80° 43' 19" E., 289.01 feet; thence
- 3) S. 09° 16' 41" E., 193.40 feet; thence
- 4) S. 80° 43' 19" W., 288.71 feet to the point of beginning.

Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036398, Monterey County Records.

**Sherriff's Public Safety Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel A, as shown on that certain Parcel Map filed for record in Volume 16 of Parcel Maps, at Page 121, Monterey County Records.

**Salinas Courthouse North Wing Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a portion of the lands of Monterey County and being a portion of that certain parcel of land designated as "A.P.N. 002-253-027" on that certain map entitled "Record of Survey of Blocks B5, B6, & B7 of Riker & Jackson Survey, and Block 10 of Stone's Addition", filed for record August 15, 2003, in Volume 26 of Surveys, at Page 98, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the westerly line of Church Street (a City street, 60 feet wide) from which the southeasterly corner of said designated parcel bears S. 09° 22' 54" E., 183.53 feet distant; thence from said point of beginning and along said westerly line of Church Street

- 1) N. 09° 22' 54" W., 183.50 feet; thence leaving said westerly street line,
- 2) N. 80° 41' 34" W., 75.72 feet; thence
- 3) S. 09° 47' 28" E., 32.06 feet; thence
- 4) S. 80° 23' 14" W., 195.42 feet; thence
- 5) N. 09° 20' 59" W., 57.72 feet; thence
- 6) S. 79° 35' 16" W., 19.96 feet; thence
- 7) S. 09° 16' 41" E., 188.84 feet; thence
- 8) N. 82° 43' 25" E., 35.23 feet; thence
- 9) S. 09° 31' 28" E., 10.64 feet; thence
- 10) N. 80° 55' 55" E., 165.35 feet; thence
- 11) S. 09° 51' 54" E., 6.22 feet; thence
- 12) N. 80° 45' 41" E., 90.54 feet to the point of beginning.

Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036399, Monterey County Records.

**County Jail Complex**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

That certain real property situate in Rancho El Sausal, City of Salinas, Monterey County, California, being a portion of that certain 20 acre parcel of land conveyed from Stanley Sherwood to the County of Monterey by that certain Deed recorded April 5, 1946 in Book 879, at Page 345 of Official Records, also being a portion of Parcel 1, as described in that certain Deed from James Bundgard, et ux, to the County of Monterey, recorded July 23, 1948 in Book 1075, at Page 281 of Official Records, also being a portion of that certain parcel of land described as Parcel 1 in that certain Deed from Howard J. Darington, et ux, to the County of Monterey, recorded November 5, 1958 in Book 1907, at Page 170 of Official Records, and being more particularly described as follows:

Beginning at the most Southerly corner of Lot 28, Block 3, as shown on that certain map entitled "Tract No. 656, Unit No. 5, Monta Vista Park Addition No. 1" filed March 22, 1972 in Book 11 of Maps, "Cities and Towns", at Page 33, Records of Monterey County, said point also being the most Southerly corner of that certain 5.855 acre tract conveyed from Stanley Sherwood to Eugene N. Sherwood by that certain Deed recorded September 16, 1921 in Book 183 of Deeds, at Page 441, Records of Monterey County; thence from said point of beginning

- 1) S. 61°00'39" W. 155.53 feet ;thence
- 2) S. 26°57'55" W. 388.27 feet; thence
- 3) S. 12°47'57" W. 378.71 feet; thence
- 4) N. 66°56'30" W. 373.16 feet; thence
- 5) S. 23°22'24" W. 108.00 feet; thence
- 6) N. 66°37'36" W. 150.00 feet; thence
- 7) N. 23°22'24" E. 403.30 feet; thence
- 8) N. 66°37'36" W. 170.70 feet; thence
- 9) N. 23°22'24" E. 214.00 feet; thence
- 10) S. 66°37'36" E. 52.15 feet; thence
- 11) N. 23°22'24" E. 291.80 feet to an angle point in the Southerly boundary of Parcel "A", as shown on that certain Parcel Map filed December 17, 1985 in Book 16 of Parcel Maps, at Page 121, Records of Monterey County; thence along said Southerly boundary
- 12) N. 75°27'20" E. 67.96 feet (N. 73°43'10" E. 68.03, map); thence
- 13) N. 26°30'48" E. 70.04 feet (N. 24°56'30" E. 70.03, map); thence
- 14) S. 66°35'04" E. 302.74 feet (S. 68°15' E. 303.12, map); thence
- 15) N. 22°37'26" E. 128.89 feet (N. 20°57'30" E. 129.05, map) to a point on the Southwesterly boundary of Lot 23 of Block 3, as shown on that certain map entitled "Tract No. 619, Unit No. 4,

Monta Vista Park Addition No. 1" filed January 20, 1971 in Book 10 of Maps, "Cities and Towns", at Page 46, Records of Monterey County; thence leaving said Southerly parcel boundary and along said Southwesterly boundary of Lots 23, Lot 24 and Lot 25 of said Block 3, and along the Southwesterly boundary of Lots 26, 27 and 28 of said Block 3 of Tract No. 656

16) S.  $41^{\circ}27'35''$  E. 367.92 feet (S.  $4^{\circ}07'30''$  E., map) to the point of beginning.

Said legal description is also shown as Parcel 3 and fully described in that certain Certificate of Compliance recorded June 7, 2013 as Series No. 2013036394 of Official Records, Monterey County.

**County Health Department's Administration Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

That certain real property situate in Rancho Sausal, in the City of Salinas, County of Monterey, State of California, being a portion of that certain parcel of land described as "Parcel No. 1" in deed from Arthur G. Panziera, et al, to the County of Monterey, dated January 16, 1956 and recorded February 7, 1956, in Book 1679 of Official Records, at Page 148, Records of Monterey County, also being a portion of that certain 62.389 acre parcel of land conveyed from Eugene Sherwood to the County of Monterey by deed dated September 2, 1985 and recorded September 7, 1985 in Book 10 of Deeds, at Page 32, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the northerly line of East Laurel Drive, a City Street of variable width, from which the most southerly corner of that certain parcel of land described as "Parcel 2819" in deed from the County of Monterey to the City of Salinas, dated February 13, 1973 and recorded September 4, 1973 in Reel 868 of Official Records, at Page 619, Records of Monterey county, bears N. 72° 52' 02" W., 375.32 feet distant; thence from said point of beginning and leaving said northerly road line

1) N. 24° 01' 59" W., 442.38 feet to a point on the southeasterly line of said Parcel 2820, being the southeasterly

line of Natividad Road, a City Street, 106 feet wide; thence along said southeasterly road line

2) N. 40° 41' 29" E., 336.91 feet, at 331.76 feet, a point on the southwesterly line of the aforesaid 62.389 acre conveyed parcel, said point also being the most easterly corner of "Parcel 2819" as said parcel is described in the aforesaid deed to the City of Salinas, 336.91 feet; thence leaving said southeasterly road line

3) S. 49° 33' 57" E., 95.01 feet; thence

4) S. 60° 51' 16" E., 322.35 feet; thence

5) S. 30° 55' 52" W., 23.74; thence tangentially curving

6) Southerly along a circular curve to the left (the center of which bears S. 59° 04' 08" E., 130.00 feet distant) through a central angle of 55° 37' 35" for an arc distance of 126.21 feet; thence leaving said curve and tangent thereto

7) S. 24° 41' 43" E., 102.45 feet; thence tangentially curving

8) Southeasterly along a circular curve to the left (the center of which bears N. 65° 18' 17" E., 350.00 feet distant) through a central angle of 2° 51' 39" for an arc distance of 17.48 feet; thence leaving said curve but not tangent thereto

9) S. 65° 50' 53" W., 465.82 feet to the point of beginning. Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036389, Official Records of Monterey County.

**EXHIBIT B****BASE RENTAL PAYMENT SCHEDULE**

<b><u>Interest Payment Date</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>	<b><u>Total Base Rental Payment</u></b>
4/1/2018		\$1,842,108.89	\$1,842,108.89
10/1/2018	\$3,670,000.00	1,883,975.00	5,553,975.00
4/1/2019		1,828,925.00	1,828,925.00
10/1/2019	4,030,000.00	1,828,925.00	5,858,925.00
4/1/2020		1,748,325.00	1,748,325.00
10/1/2020	4,120,000.00	1,748,325.00	5,868,325.00
4/1/2021		1,645,325.00	1,645,325.00
10/1/2021	4,395,000.00	1,645,325.00	6,040,325.00
4/1/2022		1,535,450.00	1,535,450.00
10/1/2022	4,605,000.00	1,535,450.00	6,140,450.00
4/1/2023		1,420,325.00	1,420,325.00
10/1/2023	4,315,000.00	1,420,325.00	5,735,325.00
4/1/2024		1,312,450.00	1,312,450.00
10/1/2024	4,565,000.00	1,312,450.00	5,877,450.00
4/1/2025		1,198,325.00	1,198,325.00
10/1/2025	4,770,000.00	1,198,325.00	5,968,325.00
4/1/2026		1,079,075.00	1,079,075.00
10/1/2026	5,000,000.00	1,079,075.00	6,079,075.00
4/1/2027		954,075.00	954,075.00
10/1/2027	5,230,000.00	954,075.00	6,184,075.00
4/1/2028		823,325.00	823,325.00
10/1/2028	5,450,000.00	823,325.00	6,273,325.00
4/1/2029		687,075.00	687,075.00
10/1/2029	5,070,000.00	687,075.00	5,757,075.00
4/1/2030		560,325.00	560,325.00
10/1/2030	5,345,000.00	560,325.00	5,905,325.00
4/1/2031		426,700.00	426,700.00
10/1/2031	5,490,000.00	426,700.00	5,916,700.00
4/1/2032		289,450.00	289,450.00
10/1/2032	6,100,000.00	289,450.00	6,389,450.00
4/1/2033		136,950.00	136,950.00
10/1/2033	235,000.00	136,950.00	371,950.00
4/1/2034		133,425.00	133,425.00
10/1/2034	1,990,000.00	133,425.00	2,123,425.00
4/1/2035		83,675.00	83,675.00
10/1/2035	2,090,000.00	83,675.00	2,173,675.00
4/1/2036		31,425.00	31,425.00
10/1/2036	2,095,000.00	31,425.00	2,126,425.00

**RECORDING REQUESTED BY:**  
Chicago Title Company

Stephen L. Vagnini  
Monterey County Recorder

CRMARIA  
10/04/2017  
02:40 PM

**When Recorded Mail Document To:**  
NIXON PEABODY LLP  
300 South Grand Avenue, Suite 4100  
Los Angeles, CA 90071  
Attn: Charles C. Wolf, Exq.

**CHICAGO TITLE-ER SIMPLIFILE**

**DOCUMENT: 2017054364**



<b>Titles:</b>	<b>1</b>	<b>Pages:</b>	<b>16</b>
Fees . . . .			.00
Taxes . . . .			.00
Other . . . .			.00
<b>AMT PAID</b>			<b>\$ .00</b>

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GROUND LEASE

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION**  
(Additional recording fee applies)

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

NIXON PEABODY LLP  
300 South Grand Avenue, Suite 4100  
Los Angeles, California 90071  
Attention: Charles C. Wolf, Esq.

DOCUMENTARY TRANSFER TAX \$ <u>0</u>
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
<i>J. [Signature]</i>
Signature of Declarant or Agent determining tax. Firm Name

City of Salinas  
Transfer to a Government Agency and is  
exempt from transfer tax

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**GROUND LEASE**

by and between

**COUNTY OF MONTEREY,**  
as Lessor

and the

**COUNTY OF MONTEREY**  
**PUBLIC IMPROVEMENT CORPORATION,**  
as Lessee

Related to  
\$78,565,000  
County of Monterey  
Certificates of Participation  
(2017 Public Facilities Refunding)

Dated as of August 1, 2017

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THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE

## GROUND LEASE

**THIS GROUND LEASE** (this "Ground Lease"), executed and entered into as of August 1, 2017, is by and between the COUNTY OF MONTEREY, a county and political subdivision of the State of California organized and existing under and by virtue of the laws of the State of California (the "County"), as lessor, and the COUNTY OF MONTEREY PUBLIC IMPROVEMENT CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation"), as lessee.

## RECITALS

**WHEREAS**, pursuant to a Trust Agreement, dated as of May 1, 2007, by and between the County of Monterey and U.S. Bank National Association as successor trustee (the "2007 Trustee"), the County executed and delivered \$152,680,000 aggregate principal amount of County of Monterey Certificates of Participation (2007 Refunding and Public Facilities Financing) (the "Refunded Certificates");

**WHEREAS**, the proceeds of the Refunded Certificates were used to (i) finance the acquisition, construction, rehabilitation and installation of certain capital facilities of the County, (ii) refinance certain lease payment obligations in connection with then outstanding certificates of participation and (iii) pay the costs of issuance in connection with the execution and delivery of the Refunded Certificates;

**WHEREAS**, the County desires to prepay lease payments to be made by the County pursuant to the Lease Agreement, dated as of May 1, 2007, by and between the County and the Corporation, (the "Prior Lease Agreement") which was executed in connection with the execution and delivery of the Refunded Certificates;

**WHEREAS**, in order to prepay the lease payments under the Prior Lease Agreement, the County will lease certain real property and the improvements thereto (the "Property") to the Corporation pursuant this Ground Lease, and the County will sublease the Property back from the Corporation pursuant to a Lease Agreement, dated as of the date hereof (the "Lease Agreement"), a memorandum of which is recorded concurrently herewith;

**WHEREAS**, the Property is more particularly described in Exhibit A hereto;

**WHEREAS**, the County and the Corporation have determined that it would be in the best interests of the County and the Corporation to prepay lease payments to be made by the County pursuant to the Prior Lease Agreement through the sale and delivery of County of Monterey Certificates of Participation (2017 Public Facilities Refunding), evidencing direct, fractional undivided interests in the base rental payments to be made by the County under the Lease Agreement; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Ground Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Ground Lease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Section 1.01 of the Lease Agreement shall have the same meanings in this Ground Lease.

**ARTICLE II**

**LEASE OF THE PROPERTY; RENTAL**

**Section 2.01. Lease of Property.** The County hereby leases to the Corporation, and the Corporation hereby leases from the County, for the benefit of the Owners of the Certificates, the Property, subject only to Permitted Encumbrances, to have and to hold for the term of this Ground Lease.

**Section 2.02. Rental.** (a) The County of Monterey Public Improvements Corporation shall pay, or cause to be paid, to the County as and for rental of the Property hereunder, the sum of not to exceed \$93,843,938.42 (the "Ground Lease Payment"). The Ground Lease Payment shall be paid from the proceeds of the Certificates; provided, however, that in the event the available proceeds of the Certificates are not sufficient to enable the Corporation to pay such amount in full, the remaining amount of the Ground Lease Payment shall be reduced to an amount equal to the amount of such available proceeds.

(b) The 2007 Trustee shall apply the Ground Lease Payment to prepay the lease payments under the Prior Lease Agreement in order to prepay the Refunded Certificates. The Corporation and the County hereby find and determine that the amount of the Ground Lease Payment does not exceed the fair market value of the leasehold interest in the Property which is conveyed hereunder by the County to the Corporation. No other amounts of rental shall be due and payable by the Corporation for the use and occupancy of the Property under this Ground Lease.

**ARTICLE III**

**QUIET ENJOYMENT**

The parties intend that the Property will be leased back to the County pursuant to the Lease Agreement for the term thereof. Subject to any rights the County may have under the Lease Agreement (in the absence of an event of default) to possession and enjoyment of the Property, the County hereby covenants and agrees that it will not take any action to prevent the Corporation from having quiet and peaceable possession and enjoyment of the Property during the term hereof and will, at the request of the Corporation and at the County's cost, to the extent

that it may lawfully do so, join in any legal action in which the Corporation asserts its right to such possession and enjoyment.

## ARTICLE IV

### SPECIAL COVENANTS AND PROVISIONS

**Section 4.01. Waste.** The Corporation agrees that at all times that it is in possession of the Property, it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

**Section 4.02. Further Assurances and Corrective Instruments.** The County and the Corporation agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Ground Lease, the Lease Agreement, the Assignment Agreement and the Trust Agreement.

**Section 4.03. Waiver of Personal Liability.** (a) All liabilities under this Ground Lease on the part of the Corporation shall be solely liabilities of the Corporation as a nonprofit public benefit corporation, and the County hereby releases each and every director, officer and employee of the Corporation of and from any personal or individual liability under this Ground Lease. No director, officer or employee of the Corporation shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the County or to any other party whomsoever for anything done or omitted to be done by the Corporation hereunder.

(b) All liabilities under this Ground Lease on the part of the County shall be solely liabilities of the County as a county and municipal corporation, and the Corporation hereby releases each and every member, officer and employee of the County of and from any personal or individual liability under this Ground Lease. No member, officer or employee of the County shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the Corporation or to any other party whomsoever for anything done or omitted to be done by the County hereunder.

**Section 4.04. Taxes.** The County covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

**Section 4.05. Right of Entry.** The County reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same.

**Section 4.06. Representations of the County.** The County represents and warrants to the as follows:

(a) the County has the full power and authority to enter into, to execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Ground Lease;

(b) except for Permitted Encumbrances, the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property for governmental purposes as contemplated by the County;

(c) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes, have been paid in full; and

(d) the Property is necessary to the County in order for the County to perform its governmental functions.

**Section 4.07. Representations of the Corporation.** The Corporation represents and warrants that the Corporation has the full power and authority to enter into, to execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Ground Lease.

## ARTICLE V

### ASSIGNMENT, SELLING AND SUBLEASING

**Section 5.01. Assignment, Selling and Subleasing.** This Ground Lease may be assigned or sold, and the Property may be subleased, as a whole or in part, by the Corporation, without the necessity of obtaining the consent of the County, if an event of default occurs under the Lease Agreement. The Corporation shall, within 30 days after such an assignment, sale or sublease, furnish or cause to be furnished to the County a true and correct copy of such assignment, sublease or sale, as the case may be.

**Section 5.02. Restrictions on County.** The County agrees that, except with respect to Permitted Encumbrances, it will not mortgage, sell, encumber, assign, transfer or convey the Property or any portion thereof during the term of this Ground Lease.

## ARTICLE VI

### IMPROVEMENTS

Title to all improvements made on the Property during the term hereof shall vest in the County.

## ARTICLE VII

### TERM; TERMINATION

**Section 7.01. Term.** The term of this Ground Lease shall commence as of the date of commencement of the term of the Lease Agreement and shall remain in full force and effect from such date to and including October 1, 2036, unless such term is extended or sooner terminated as hereinafter provided.

**Section 7.02. Extension; Early Termination.** If, on October 1, 2036, the Certificates shall not be fully paid, or provision therefor made in accordance with Article X of the Trust Agreement, or the Trust Agreement shall not be discharged by its terms, or if the Rental Payments payable under the Lease Agreement shall have been abated at any time, then the term of this Ground Lease shall be automatically extended until the date upon which all Certificates shall be fully paid, or provision therefor made in accordance with Article X of the Trust Agreement, and the Trust Agreement shall be discharged by its terms, except that the term of this Ground Lease shall in no event be extended more than ten years. If, prior to October 1, 2036, all Certificates shall be fully paid, or provisions therefor made in accordance with Article X of the Trust Agreement, and the Trust Agreement shall be discharged by its terms, the term of this Ground Lease shall end simultaneously therewith.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01. Binding Effect.** This Ground Lease shall inure to the benefit of and shall be binding upon the County, the Corporation and their respective successors and assigns.

**Section 8.02. Severability.** In the event any provision of this Ground Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.03. Amendments; Substitution and Release.** This Ground Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of Section 8.01 of the Lease Agreement. The County shall have the right to substitute alternate real property for the Property or to release portions of the Property as provided in Section 8.03 of the Lease Agreement.

**Section 8.04. Assignment.** The Corporation and County acknowledge that the Corporation has assigned its right, title and interest in and to this Ground Lease to the Trustee pursuant to the Assignment Agreement, dated as of the date hereof, and recorded concurrently herewith. The County consents to such assignment.

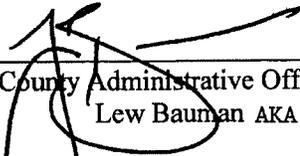
**Section 8.05. Captions.** The captions or headings in this Ground Lease are for convenience only and in no way define or limit the scope or intent of any provision of this Ground Lease.

**Section 8.06. Governing Laws.** This Ground Lease shall be governed by and construed in accordance with the laws of the State of California.

**Section 8.07. Execution in Counterparts.** This Ground Lease may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Ground Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**COUNTY OF MONTEREY,**  
as Lessor

By:   
County Administrative Officer  
Lew Bauman AKA Lew Cary  
Bauman

**COUNTY OF MONTEREY PUBLIC  
IMPROVEMENT CORPORATION,**  
as Lessee

By:   
President  
Michael J. Miller AKA Michael  
James Miller

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

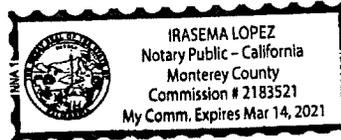
STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On September 28 2017, before me, Irasema Lopez, Notary Public, personally appeared Lew Cary Bowman, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature [Handwritten Signature] [SEAL]



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

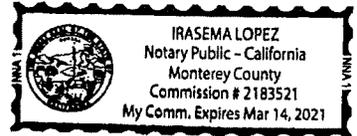
STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On September 28, 2017, before me, Irasema LOPEZ, Notary Public, personally appeared Michael James Miller, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Irasema Lopez* [SEAL]



**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

**County Administration Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a portion of the lands of Monterey County and being a portion of that certain parcel of land designated as "A.P.N. 002-253-027" on that certain map entitled "Record of Survey of Blocks B5, B6, & B7 of Riker & Jackson Survey, and Block 10 of Stone's Addition", filed for record August 15, 2003, in Volume 26 of Surveys, at Page 98, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the easterly line of Capitol Street (a City Street, 60 feet wide) from which the southwesterly corner of said designated parcel bears S. 09° 22' 09" E., 191.26 feet distant; thence from said point of beginning and along said westerly line of Capitol Street

- 1) N. 09° 22' 09" W., 193.40 feet; thence leaving said easterly street line,
- 2) N. 80° 43' 19" E., 289.01 feet; thence
- 3) S. 09° 16' 41" E., 193.40 feet; thence
- 4) S. 80° 43' 19" W., 288.71 feet to the point of beginning.

Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036398, Monterey County Records.

**Sherriff's Public Safety Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel A, as shown on that certain Parcel Map filed for record in Volume 16 of Parcel Maps, at Page 121, Monterey County Records.

**Salinas Courthouse North Wing Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a portion of the lands of Monterey County and being a portion of that certain parcel of land designated as "A.P.N. 002-253-027" on that certain map entitled "Record of Survey of Blocks B5, B6, & B7 of Riker & Jackson Survey, and Block 10 of Stone's Addition", filed for record August 15, 2003, in Volume 26 of Surveys, at Page 98, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the westerly line of Church Street (a City street, 60 feet wide) from which the southeasterly corner of said designated parcel bears S. 09° 22' 54" E., 183.53 feet distant; thence from said point of beginning and along said westerly line of Church Street

- 1) N. 09° 22' 54" W., 183.50 feet; thence leaving said westerly street line,
- 2) N. 80° 41' 34" W., 75.72 feet; thence
- 3) S. 09° 47' 28" E., 32.06 feet; thence
- 4) S. 80° 23' 14" W., 195.42 feet; thence
- 5) N. 09° 20' 59" W., 57.72 feet; thence
- 6) S. 79° 35' 16" W., 19.96 feet; thence
- 7) S. 09° 16' 41" E., 188.84 feet; thence
- 8) N. 82° 43' 25" E., 35.23 feet; thence
- 9) S. 09° 31' 28" E., 10.64 feet; thence
- 10) N. 80° 55' 55" E., 165.35 feet; thence
- 11) S. 09° 51' 54" E., 6.22 feet; thence
- 12) N. 80° 45' 41" E., 90.54 feet to the point of beginning.

Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036399, Monterey County Records.

**County Jail Complex**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

That certain real property situate in Rancho El Sausal, City of Salinas, Monterey County, California, being a portion of that certain 20 acre parcel of land conveyed from Stanley Sherwood to the County of Monterey by that certain Deed recorded April 5, 1946 in Book 879, at Page 345 of Official Records, also being a portion of Parcel 1, as described in that certain Deed from James Bundgard, et ux, to the County of Monterey, recorded July 23, 1948 in Book 1075, at Page 281 of Official Records, also being a portion of that certain parcel of land described as Parcel 1 in that certain Deed from Howard J. Darington, et ux, to the County of Monterey, recorded November 5, 1958 in Book 1907, at Page 170 of Official Records, and being more particularly described as follows:

Beginning at the most Southerly corner of Lot 28, Block 3, as shown on that certain map entitled "Tract No. 656, Unit No. 5, Monta Vista Park Addition No. 1" filed March 22, 1972 in Book 11 of Maps, "Cities and Towns", at Page 33, Records of Monterey County, said point also being the most Southerly corner of that certain 5.855 acre tract conveyed from Stanley Sherwood to Eugene N. Sherwood by that certain Deed recorded September 16, 1921 in Book 183 of Deeds, at Page 441, Records of Monterey County; thence from said point of beginning

- 1) S. 61°00'39" W. 155.53 feet ;thence
- 2) S. 26°57'55" W. 388.27 feet; thence
- 3) S. 12°47'57" W. 378.71 feet; thence
- 4) N. 66°56'30" W. 373.16 feet; thence
- 5) S. 23°22'24" W. 108.00 feet; thence
- 6) N. 66°37'36" W. 150.00 feet; thence
- 7) N. 23°22'24" E. 403.30 feet; thence
- 8) N. 66°37'36" W. 170.70 feet; thence
- 9) N. 23°22'24" E. 214.00 feet; thence
- 10) S. 66°37'36" E. 52.15 feet; thence
- 11) N. 23°22'24" E. 291.80 feet to an angle point in the Southerly boundary of Parcel "A", as shown on that certain Parcel Map filed December 17, 1985 in Book 16 of Parcel Maps, at Page 121, Records of Monterey County; thence along said Southerly boundary
- 12) N. 75°27'20" E. 67.96 feet (N. 73°43'10" E. 68.03, map); thence
- 13) N. 26°30'48" E. 70.04 feet (N. 24°56'30" E. 70.03, map); thence
- 14) S. 66°35'04" E. 302.74 feet (S. 68°15' E. 303.12, map); thence
- 15) N. 22°37'26" E. 128.89 feet (N. 20°57'30" E. 129.05, map) to a point on the Southwesterly boundary of Lot 23 of Block 3, as shown on that certain map entitled "Tract No. 619, Unit No. 4,

Monta Vista Park Addition No. 1" filed January 20, 1971 in Book 10 of Maps, "Cities and Towns", at Page 46, Records of Monterey County; thence leaving said Southerly parcel boundary and along said Southwesterly boundary of Lots 23, Lot 24 and Lot 25 of said Block 3, and along the Southwesterly boundary of Lots 26, 27 and 28 of said Block 3 of Tract No. 656

16) S.  $41^{\circ}27'35''$  E. 367.92 feet (S.  $4^{\circ}07'30''$  E., map) to the point of beginning.

Said legal description is also shown as Parcel 3 and fully described in that certain Certificate of Compliance recorded June 7, 2013 as Series No. 2013036394 of Official Records, Monterey County.

**County Health Department's Administration Building**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

That certain real property situate in Rancho Sausal, in the City of Salinas, County of Monterey, State of California, being a portion of that certain parcel of land described as "Parcel No. 1" in deed from Arthur G. Panziera, et al, to the County of Monterey, dated January 16, 1956 and recorded February 7, 1956, in Book 1679 of Official Records, at Page 148, Records of Monterey County, also being a portion of that certain 62.389 acre parcel of land conveyed from Eugene Sherwood to the County of Monterey by deed dated September 2, 1985 and recorded September 7, 1885 in Book 10 of Deeds, at Page 32, Records of Monterey County, and being more particularly described as follows:

Beginning at a point on the northerly line of East Laurel Drive, a City Street of variable width, from which the most southerly corner of that certain parcel of land described as "Parcel 2819" in deed from the County of Monterey to the City of Salinas, dated February 13, 1973 and recorded September 4, 1973 in Reel 868 of Official Records, at Page 619, Records of Monterey county, bears N. 72° 52' 02" W., 375.32 feet distant; thence from said point of beginning and leaving said northerly road line

1) N. 24° 01' 59" W., 442.38 feet to a point on the southeasterly line of said Parcel 2820, being the southeasterly

line of Natividad Road, a City Street, 106 feet wide; thence along said southeasterly road line

2) N. 40° 41' 29" E., 336.91 feet, at 331.76 feet, a point on the southwesterly line of the aforesaid 62.389 acre conveyed parcel, said point also being the most easterly corner of "Parcel 2819" as said parcel is described in the aforesaid deed to the City of Salinas, 336.91 feet; thence leaving said southeasterly road line

3) S. 49° 33' 57" E., 95.01 feet; thence

4) S. 60° 51' 16" E., 322.35 feet; thence

5) S. 30° 55' 52" W., 23.74; thence tangentially curving

6) Southerly along a circular curve to the left (the center of which bears S. 59° 04' 08" E., 130.00 feet distant) through a central angle of 55° 37' 35" for an arc distance of 126.21 feet; thence leaving said curve and tangent thereto

7) S. 24° 41' 43" E., 102.45 feet; thence tangentially curving

8) Southeasterly along a circular curve to the left (the center of which bears N. 65° 18' 17" E., 350.00 feet distant) through a central angle of 2° 51' 39" for an arc distance of 17.48 feet; thence leaving said curve but not tangent thereto

9) S. 65° 50' 53" W., 465.82 feet to the point of beginning. Certificate of Compliance recorded June 7, 2013, Instrument No. 2013036389, Official Records of Monterey County.

**EXHIBIT C**

**SYSTEM DESCRIPTION**

1. **System Location:** 1414 Natividad Rd., Salinas, 93906, CA
2. **Estimated System Size (DC kW):** 389 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

PV System including modules and inverters.

4. **Host Utility:** PG&E (“Utility”)
5. **Delivery Point and Premises:** See Exhibit A to this Lease which 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
  - 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 D**

**INSURANCE REQUIREMENTS**

- (a) Lessee shall obtain and maintain the following insurance policies:
- (i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessor shall be named as an additional insured under this liability insurance, provided however that Lessee shall in no event be obligated to repair or replace Lessor's buildings or Premises; and
  - (ii) Lessee may satisfy the insurance requirements contained in this Lease though any combination of primary and/or excess coverage.
- (b) Lessor shall obtain and maintain the following insurance policies:
- (i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessee shall be named as an additional insured under this liability insurance;
  - (ii) All-risk property insurance with coverage equal to the replacement value of the Premises; and
  - (iii) Lessor may satisfy the insurance requirements contained in this Lease though any combination of self-insurance, primary and/or excess coverage.

*Execution Version*

**MASTER ENERGY SERVICES AGREEMENT**

**by and between**

**Mynt Systems Inc.**

**and**

**County of Monterey**

**Dated June 13, 2023**

## MASTER ENERGY SERVICES AGREEMENT

This Master Energy Services Agreement (this “**MESA**”) is made and entered into on June 13, 2023 (the “**Effective Date**”), between Mynt Systems Inc., a California corporation (“**Mynt**”), with a California State Contractor’s License Number of 1009790 and County of Monterey, a political subdivision of the State of California (“**County**” and, together with Mynt, the “**Parties**” and each a Party).

### **RECITALS**

A. Mynt and its Affiliates finance, construct, install, operate, and maintain Energy Service Systems. Energy Service Systems include solar systems, battery storage systems, energy efficiency devices, electric vehicle charging stations, and other products and mechanisms to reduce emissions or energy use in buildings.

B. County owns or leases various properties and County wishes to reduce its greenhouse gas emissions, energy consumption, and energy costs and to improve its energy quality and reliability.

C. County desires to implement multiple Energy Service Systems on such properties; provided that the anticipated cost of implementing such Energy Service Systems will be less than the anticipated cost to County to procure thermal, electrical, and other energy, and related operational, maintenance and other services without such applicable Energy Service Systems. California Government Code §§ 4217.10 through 4217.18, authorizes the County to enter into this MESA with Mynt and engage (A) Mynt to conduct integrated energy assessments in accordance with the scope of work described on Part 2 of Annex 1 at various County owned or leased properties to identify energy savings that can be achieved by installing and operating Energy Service Systems at such locations (each, an “**Assessment**”) and (B) subject to County approval, engage Mynt to install and operate such Energy Service Systems at such properties as recommended by Mynt based on the results of such Assessments.

D. Mynt has identified a beneficial and time-sensitive funding opportunity under the Self Generation Incentive Program (“**SGIP**”), administered by Pacific Gas & Electric Company as a rebate (“**PG&E**”). Such rebate, if granted, may be used to install Energy Service Systems which are battery storage systems as part of a microgrid ready solar plus storage system for each correctional facility site located at 1410 Natividad Road, Salinas, California 93906 (the “**Natividad Site**”) and the County administrative facility located at 1441 Schilling Place, Salinas, California 93901 (the “**Schilling Site**”).

E. On May 5, 2020, pursuant to Monterey Board Order 20-332, the Monterey Board of Supervisors authorized Mynt to apply for SGIP funding for both the Natividad Site and the Schilling Site and Mynt accordingly submitted an application approved by County for SGIP funding (the “**Application**”) on County’s behalf on May 12, 2020. Mynt has been authorized to submit and has submitted the requisite deposit value of 5% of the total requested SGIP rebate (the “**Application Fee**”) when the Application was approved by PG&E.

F. Pursuant to California Government Code § 4217.12, County held a regularly scheduled public hearing (the “**Approval Hearing**”) on **June 13, 2023**, of which two weeks advance public notice was given regarding this MESA and its subject matter.

G. County determined at the Approval Hearing that entering into this MESA for the purpose of implementing Assessments through ESS Confirmations is in the best interests of County and that California Government Code § 4217.10 et seq. permits County to enter into this MESA and the ESS Confirmations issued thereunder.

H. By adoption of a Resolution, to be affixed herewith following the Approval Hearing, County approves this MESA and authorizes its execution and the execution of ESS Confirmations thereunder.

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

## AGREEMENT

1. MESA Overview; ESS Confirmations; PSA Termination. This MESA is a master services agreement with terms and conditions that will apply to Assessments and as further described herein to ESS Confirmations. From time to time during the MESA Term, County shall provide Required Information (as defined in Part 1 of Annex 1) for certain Premises to Mynt and the Parties may enter into (i) an Assessment Authorization substantially in the form attached hereto as Exhibit A, subject to the Additional Assessment Terms (as defined in Part 1 of Annex 1), as confirmation of authorizing Mynt to conduct an Assessment with respect to such County's Premises (each, an "**Assessment Authorization**") and (ii) one or more separate ESS Confirmations for each specific type of ESS that will be installed at such Premises, except that Mynt may elect to designate an Affiliate of Mynt to execute, and be the "Provider" under, any individual ESS Confirmation. Each ESS Confirmation will incorporate by reference the General Terms and Conditions attached hereto as Exhibit B (the "**General Conditions**") unless otherwise specified therein. Capitalized terms used in this MESA but not otherwise defined herein shall have the meanings given to them in Section 1.1 of the General Conditions. The General Conditions shall apply to this MESA, and Mynt and the County under the MESA, as specified in the General Conditions; provided, however, that Article 10 of the General Conditions shall apply to this MESA with respect to the performance of the County and Mynt under this MESA only and to the extent any services under this MESA are Public Works or include expenditures of public funds, the applicable requirements for Provider described in the General Conditions shall apply to Mynt with respect to this MESA. In addition, the forms required by the County and attached to the General Conditions as Schedule 3 shall be completed and executed, as applicable, by Mynt on the Effective Date or if required by the County, prior to the Effective Date. County and Provider shall use the following forms of ESS Confirmations: (A) for photovoltaic solar power generating systems which may or may not include an energy storage battery system, Exhibit C-1 (inclusive of an energy storage system) and Exhibit C-2 (exclusive of an energy storage system), (B) for battery energy storage systems only, Exhibit D, (C) for electric vehicle charging stations, Exhibit E, (D) for energy and water efficiency systems and equipment, Exhibit F, and (E) for heating, ventilation, and air conditioning (HVAC) systems, Exhibit G. Each ESS Confirmation shall constitute a separate, stand-alone agreement with respect to the ESS(s) covered by such ESS Confirmation. In the event of any conflict between the General Conditions and the terms and conditions in an ESS Confirmation excluding the General Conditions, the terms and conditions of the applicable ESS Confirmation (without the General Conditions) shall govern. The Parties further agree to hereby terminate the PSA as of the Effective Date and that the PSA shall have been deemed amended to allow for such termination.

2. MESA Term. The term of this MESA (the "**MESA Term**") shall commence on the Effective Date and end on the earlier of: (i) June 13, 2028, (ii) the date on which the last ESS Confirmation executed by the County and Provider has expired or has been terminated in accordance with its terms, and (iii) the date on which a Party by thirty (30) days' prior written notice to the other Party terminates this MESA. For the avoidance of doubt, termination of this MESA shall not terminate any ESS Confirmation or affect any of the General Conditions incorporated therein and any amendments to the MESA modifying the General Conditions shall have no effect on any ESS Confirmations in effect prior to the date of such amendment.

3. Contingency Payment.

- a. Subject to Excusable Events, if County (i) either terminates the MESA or unreasonably refuses to execute an initial ESS Confirmation with respect to the Natividad Site and the Schilling Site, covering photovoltaic solar power generating systems which may include an energy storage battery system, within thirty (30) days of executing the MESA or (ii) unreasonably refuses to execute any other ESS Confirmation for any Site for which an Assessment identifying estimated energy savings was conducted (including, without limitation, with

respect to Sites for which other ESS Confirmations were already entered into), the County shall reimburse Mynt for Mynt's actual fees, expenses, disbursements, overhead and related costs incurred and expended in preparing the applicable Assessment and preparing and submitting any related applications, including, the Application and Application Fee, which amount in total shall not exceed (x) Twenty-Five Thousand Dollars (\$25,000.00) per Site for each of the Natividad Site and the Schilling Site with respect to the related initial ESS Confirmation(s) and (y) the amount listed in the applicable Assessment per ESS as "Maximum Reimbursement Amount" for each other ESS Confirmation with respect to any Site (each an "Assessment Fee"). "Excusable Events" means, with respect to this Section 3(a) of the MESA only, County's need to present results at certain public meetings or the continuance of such presentations that goes beyond the expected timeframe resulting in delays impacting the execution of ESS Confirmations; provided, that County, using commercially reasonable efforts, diligently pursues the presentation of such results.

- b. In the event the applicable Provider terminates the ESS Confirmation for either the Natividad Site or the Schilling Site prior to the start of construction, or is unable, in Provider's sole discretion, to substantially perform the scope of Work or Services specified in such ESS Confirmation, County may without any obligation to do so, and only with respect to such Sites, elect to remit the Assessment Fee in which case it shall thereby be granted an irrevocable and non-exclusive license to use the Work Product that is solely related to Mynt's work with respect to the Assessment, and may solely be applied to the Natividad Site or the Schilling Site, as applicable. Subject to the prior sentence, nothing in this MESA conveys to County a license or other right to trademarks, copyrights, technology, or other intellectual property of Mynt.
- c. The Work Product referenced in Section 3(b) of this MESA may not be used by County, except as specifically licensed in Section 3(b) of this MESA, as a basis for facility construction or implementation of the applicable ESS by any entity other than the applicable Provider without the prior written consent of Mynt, to be provided in its sole and absolute discretion. Any unauthorized use of the Work Product will be at County's sole risk and without liability to Mynt, and County will defend, indemnify and hold harmless Mynt, its Subcontractors, and their directors, employees, and agents from any and all Liabilities associated with or resulting from such use.

4. Insurance. Required insurance coverages of the Parties to the MESA are set forth on Annex 2 of this MESA, as such insurance coverage requirements may be modified or supplemented in writing.

5. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in Section 1.1 of the General Conditions.

6. Notice and Contact Information. Any type of notice or other written instrument required or permitted to be given under this MESA shall be in writing delivered by hand, electronic mail, overnight courier, or regular certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be delivered to each party of the MESA at the address set forth below or such other address as such party may specify in writing by a Notice. Notices or other written instruments required or permitted to be given under any ESS Confirmation shall be governed by the applicable ESS Confirmation.

To Mynt:           Address:           111 Mission Street, Santa Cruz, CA 95060

                          Attention:        Corrina Hansen

                          Telephone:       [\(408\) 426-5420](tel:(408)426-5420)

                          Email:           chansen@myntsystems.com

To County:         Address:           County Administrative Office,  
  168 West Alisal Street,3rd Floor  
  Salinas, CA 93901

                          Attention:        Sustainability Program

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this MESA as of the day and year first written above.

**COUNTY OF MONTEREY**

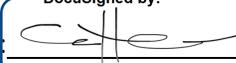
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MYNT SYSTEMS, INC**

DocuSigned by:  
By:  \_\_\_\_\_

Name: Corrina Hansen

Title: CFO

Date: 6/2/2023

**APPROVED AS TO FORM**

**CONTRACTS/PURCHASING**

Name: \_\_\_\_\_

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

Title: Contracts/Purchasing Officer

Date: \_\_\_\_\_

DocuSigned by:  
By:  \_\_\_\_\_

Name: Derek Hansen

Title: CEO

Date: 6/2/2023

**APPROVED AS TO FORM & LEGALITY**

**OFFICE OF THE COUNTY COUNSEL-**

**RISK MANAGEMENT, LESLIE GIRARD**

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

Name: \_\_\_\_\_

Title: Deputy County Counsel

Date: \_\_\_\_\_

**COMPANY ADDRESS:**

111 Mission Street

Santa Cruz, CA 95060

**MYNT's License Type: B, C10, C46**

**License Number: 1009790**

**License Expiration Date: 12/31/2023**

**NOTE:** PROVIDERS ARE REQUIRED TO BE LICENSED AND REGULATED BY THE PROVIDERS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A PROVIDER MAY BE REFERRED TO THE REGISTRAR, PROVIDERS' STATE LICENSE BOARD, P O BOX 26000, SACRAMENTO, CALIFORNIA 95826

**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: \_\_\_\_\_

\*INSTRUCTIONS: The full legal name of Mynt which is a corporation shall be set forth above together with the signatures of two (2) specified officers.

## Annex 1

### Assessment Scope and Obligations

#### Part 1 – Definitions

“**Required Information**” means the information listed in Part 3 of Annex 1 to this MESA and County’s obligation to assist Mynt in performing the Assessment for the applicable Premises by providing Mynt (or if instructed by Mynt, a subcontractor) (i) with access to key decisionmakers and stakeholders of County, (ii) including both its employees and agents, such access to such Premises and other relevant facilities of County as Mynt deems necessary, and (iii) causing County’s energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the applicable Premises and other relevant facilities. Mynt will be entitled to rely upon the accuracy and completeness of all information so provided by County and County’s energy suppliers.

“**Additional Assessment Terms**” means that (i) the County shall assist Mynt in performing the Assessment for each of the Sites (including the Natividad Site and the Schilling Site) by providing (A) Mynt with access to key decision makers and stakeholders of the County, (B) Mynt, including both its employees and agents, such access to the Sites and other relevant facilities of the County as Mynt deems necessary, and (C) or causing the County’s energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities, (ii) Mynt will be entitled to rely upon the accuracy and completeness of all information provided to Mynt by the County and the County’s energy suppliers; provided, that Mynt will promptly provide written notice to the County if it determines there is any incorrect data included in the information so provided and that Mynt will have no obligation to correct or confirm any such information unless otherwise specified in the applicable ESS Confirmation.

#### Part 2 – Scope of Work

Mynt will perform an Assessment for each applicable Site and will provide recommendations (“Recommendations”) to the County, which may be provided on a successive basis as each Phase (as defined below) is completed. Each of the Recommendations will include the applicable ESS Confirmations by Site which shall be compatible with the County’s investment and infrastructure improvement goals.

##### **I. Assessment**

- A. Perform detailed review of documents delivered above.
- B. Perform an inspection survey to:
  1. Identify potential energy conservation measures (“ECMs”) and opportunities for distributed and renewable generation technologies.
  2. Identify the potential locations and type of application for solar photovoltaics (PV) and other ECM installations.

3. Interview the facility manager, chief engineer, or others as needed.
  4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
  5. Identify “process” energy use, such as production equipment, computer rooms, printing plants, parking garages, etc.
  6. Obtain the hours of operation for building systems and equipment, and expected occupancy and use.
  7. Survey major energy using equipment, and record (to extent available) the pertinent information for the following:
    - a. Lighting
    - b. Heating, Ventilation, and Air Conditioning (HVAC) equipment
    - c. Controls and automation
    - d. Other (process, outdoor lighting, etc.)
    - e. Pumps
    - f. Compressors
    - g. Boilers
    - h. Heat exchangers
    - i. Fan coil units
  8. Perform Site survey, consisting of:
    - a. Site walk
    - b. Shading analysis
    - c. Logistics for Staging, Constructability, Access
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
1. Identify current rate schedule, analyze electrical usage and model load profile for each Site.
  2. Determine historical Site-specific rate escalation.
  3. Determine expected solar photovoltaic production curve for proposed Sites.
  4. Overlay electrical load profile with expected solar photovoltaic production curve, to right-size the solar photovoltaic system(s) and identify rate restructuring opportunities.
  5. Model Energy Storage and Solar against load profiles, rate structures and Time of Use (TOU) to optimize for demand management, load shifting and maximum resilience/back-up capacity.
- D. Analyze HVAC and electrical usage for each Site, where existing historical sub-meter data is available.

1. A general scope of the construction work required for installation of work.
  2. Rough sizing of major equipment and a preliminary selection.
- E. Calculate energy use and cost for all viable ECMs and renewable generation technologies:
1. For each ECM or renewable generation technology, calculate estimated annual energy savings.
  2. Model facility electrification/decarbonization in order to determine additional loads and demand, and subsequently right size onsite generation and energy storage.
  3. Calculation methodology will be determined by Mynt and may include using modeling software such as Market Manager or Trace 700, or may involve spreadsheet analysis or other accepted, standard engineering procedures.
  4. Calculations will follow American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) or other nationally recognized authority and will be based on sound engineering principle(s).
  5. Operational and maintenance savings, if any, will be identified as a separate line item.
- F. Identify how the proposed ECMs, renewable energy, operational efficiency measures, and other program elements could be utilized to leverage opportunities to promote the County, and local business, cultural, and public-private partnership and innovation, including workforce development, local school district and regional education curriculum development opportunities.

## **II. Technologies to be Considered**

During the performance of each Assessment, Mynt will consider the below technologies and strategies, in addition to any other technologies and strategies as Mynt deems appropriate, in segmented phases (each a “Phase”) as exemplified below.

### Phase I

1. Lighting
  - a. Lighting fixture retrofit
  - b. Lighting controls
  - c. LED parking lot lighting
  - d. Energy efficient security lighting
2. Building automation/direct digital controls
3. Air handling systems:

- a. Variable volume conversion
  - b. Zone/area isolation & shutdown
  - c. Heat recovery
  - d. Outside air economizer
  - e. Return air conversion
4. Solar Photovoltaic
  5. Energy Storage Systems
    - a. Demand management software
    - b. Alternative battery chemistries
    - c. Backup power, islanding and UPS
    - d. Microgrids
  6. Electric vehicle charging stations
  7. Electrification

#### Phase II

1. Envelope
  - a. Fenestrations
  - b. Insulation
  - c. Air Filtration
2. Plant/equipment modifications:
  - a. Chiller upgrade/replacement
  - b. Cooling tower upgrade/replacement
  - c. Variable flow chilled water conversion
  - d. Plant automation
  - e. Boiler burner conversion/upgrade
  - f. Fuel switching
  - g. Duct inspection – repairing broken ducts and/or duct cleaning
  - h. Energy efficient swimming pool equipment upgrades (if applicable)
3. Water Heating
  - a. Solar Thermal
  - b. CHP
  - c. Cogen

#### Phase III

1. Operational Efficiencies
  - a. Specialized Equipment
  - b. Behavioral Modifications
  - c. Scheduling
2. Building automation/direct digital controls

#### Phase IV

1. Water Efficiencies
  - a. Conservation
  - b. Filtration

### **III. Recommendations**

Mynt will provide the County with Recommendations on a rolling basis as Assessments for each Phase are completed. If desired by the Parties, such Recommendations will be implemented through Change Orders to ESS Confirmations. These Recommendations will include:

- A. A draft ESS Confirmation that will identify the contract amount, scope of work, and payment schedule.
- B. A scope of work for each ECM per Site that is compatible with the County's investment and infrastructure improvement goals.
- C. Prepare a Proposal, which includes a "Project Cost" and a list of "Services to Be Provided," in anticipation of the Provider and the County entering into a ESS Confirmation under the MESA to design, construct, install, and monitor the approved projects proposed in the Recommendations. Cost calculations will explicitly state that the ESS Confirmation must be promptly executed to avoid price increases and that hazardous substance or abnormal subsurface/soil condition issues must not be present.

### **Part 3 – Required Information**

To the extent not already delivered to Mynt, from time to time, after execution of the MESA, the County will produce the following detailed documentation where available for each applicable Premises, to the extent doing so is permitted by Applicable Law in order for Mynt to complete the applicable Assessment:

1. One actual utility company invoice for all utilities serving the Premises and electronic access to all site utility data for a minimum of three (3) years, and preferably five (5) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
2. Utility company demand interval recordings of 15/30-minute electrical demand for characteristic months of the year, where available.
3. Record drawings (AutoCAD or hard copy) for the Premises:
  - a. mechanical
  - b. plumbing
  - c. electrical
  - d. building automation and temperature controls
  - e. structural
  - f. architectural
  - g. modifications and remodels

- h. site landscaping
- 4. A list of key contacts at each Premises, including County personnel knowledgeable of the electrical, HVAC, lighting and controls systems.
- 5. Energy management system and HVAC equipment operating schedules, point lists and sequences of operation.
- 6. Original construction submittals and factory data (specifications, pump curves, etc.), where available.
- 7. Test and balance reports for water and air systems, where available.
- 8. List of existing Liens against the Premises or any portion thereof, if any, and copies of related filings (for example, in the county recorder's office).

**Annex 2**

**Insurance Required under the MESA**

**a. Mynt Insurance.**

- i. Workers' Compensation/Employers Liability for states in which Mynt is not a qualified self-insured. Limits as follows:
  1. Workers' Compensation: Statutory
  2. Employers Liability: Bodily Injury by accident \$1,000,000 each accident  
Bodily Injury by disease  
\$1,000,000 each employee  
Bodily Injury by disease  
\$1,000,000 policy limit
- ii. Commercial General Liability including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations with coverage of at least \$1,000,000 per occurrence and limits of:
  - \$2,000,000 each occurrence for Bodily Injury and Property Damage
  - \$4,000,000 General Aggregate - other than Products/Completed Operations
  - \$4,000,000 Products/Completed Operations Aggregate
  - \$2,000,000 Personal & Advertising Injury
  - \$ 100,000 Damage to premises rented to Contractor

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms.

- iii. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.
- iv. Professional Liability insurance with limits of:
  - \$1,000,000 per occurrence
  - \$2,000,000 aggregate

Coverage to be written on a claims-made form. Consequently, Mynt 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 years following the expiration or earlier termination of this Agreement.

- v. Umbrella/Excess Liability Insurance. Limits as follows:
  - \$1,000,000 each occurrence
  - \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims-

made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

vi. Other Requirements

1. All policies, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's purchasing manager. Unless otherwise specified by the MESA, all such insurance shall be written on an occurrence basis, or, if the policy is not on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Mynt completes its performance of services under the MESA.
2. To the extent commercially practicable and permitted by Mynt's insurance carrier, all policies of insurance maintained by Mynt shall contain a provision whereby the insurer agrees to give the other County at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated. Each policy shall provide coverage for Mynt and additional insureds with respect to claims arising from each subcontractor, if any, performing work under the MESA, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
3. The insurance provided for Workers Compensation and Employers Liability above will contain waivers of subrogation rights against the County, but only to the extent of the indemnity obligations contained in the MESA.
4. The insurance provided for Commercial General Liability and Auto Liability above will: (1) Include the County, its officers, agents, and employees as Additional Insureds with respect to liability arising solely out of Mynt's work, including ongoing and completed operations, and shall further provide that any insurance or self-insurance maintained by the County, and the insurance of the Additional Insureds, shall be non-contributory. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000) and (2) Provide that Mynt's insurance is primary with respect to all insureds, but only to the extent of the indemnity obligations contained in the MESA.

**County Insurance.** The County shall maintain commercial general liability insurance with coverage of at least \$4,000,000 per occurrence and \$4,000,000 annual aggregate. The County 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.

**EXHIBIT A TO MASTER ENERGY SERVICES AGREEMENT**

**FORM OF ASSESSMENT AUTHORIZATION**

Reference is hereby made to that certain Master Energy Services Agreement (the "MESA") by and between Mynt Systems Inc. ("Mynt") and the County of Monterey (the "County"). Capitalized terms not defined in this Assessment Authorization shall have the meaning given to them in the MESA. Under the MESA, County shall provide Required Information for certain Premises to Mynt. Subject to the Additional Assessment Terms and the MESA, the County hereby authorizes Mynt to conduct an Assessment at the Premises/Sites listed below.

**Assessment Authorized for:**

Premises/Site Name	Address

The County has or will promptly deliver the applicable Required Information with respect to the above listed Premises/Sites, as contemplated under the MESA.

Authorized and Agreed:

**COUNTY OF MONTEREY**

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

Agreed and Accepted:

**MYNT SYSTEMS, INC**

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

## **EXHIBIT B TO MASTER ENERGY SERVICES AGREEMENT**

### **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (the “**General Conditions**”) shall apply with respect to each ESS Confirmation, the related ESS, Premises, and Site, as incorporated in such ESS Confirmation by reference and to the MESA where specified. References herein to “Party” or “Parties” shall be to County and Provider with respect to the applicable ESS Confirmation and to County and Mynt with respect to the MESA.

#### **Article 1: DEFINITIONS AND RULES OF INTERPRETATION**

**Section 1.1 Definitions.** Capitalized terms used in the MESA or the ESS Confirmation and not otherwise defined therein shall have the meanings given to them in this Section 1.1 of the General Conditions.

“**Access Party**” means Provider, Subcontractors, Financing Parties, utilities, the agents and representatives of any of the foregoing, and any other relevant third-party identified in an Energy Service System Confirmation as having a legitimate need for access to the Premises.

“**Access Protocols**” means County’s standard policies for access to the Premises as set forth in the Energy Service System Confirmation which may include satisfaction of the appropriate background check and Live Scan requirements for persons entering into certain facilities.

“**Affiliate**” means, when used with respect to a specified Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person.

“**Applicable Law**” means any law, statute, rule, regulation, ordinance, order, code, Governmental Approval, interpretation, judgment, decree, injunction, directive, or decision of any Governmental Authority having jurisdiction over the matter, Person, or property in question.

“**Approved Financing**” means any SGIP funding or financing, on-bill financing or other financing mechanisms that fully or partially fund Provider’s construction of any ESS.

“**Approved Financing Change**” means a material change in the terms of the Approved Financing, as reasonably determined by Provider.

“**Assessment**” means an integrated energy assessment performed by Mynt or on Mynt’s behalf at various County owned or leased properties to identify energy savings that can be achieved by installing and operating Energy Service Systems at such locations.

“**Assessment Authorization**” means the confirmation of authorizing Mynt to conduct an Assessment with respect to County’s Premises.

“**Billing Period**” means each full or partial calendar month that follows the Installation Date or such other period as may be specified in the Energy Service System Confirmation, provided that the final Billing Period shall end concurrently with the expiration or termination of the Service Term.

“**Business Day**” means any day, excluding (i) Saturday and Sunday and (ii) any day which is (A) a legal holiday in the State, (B) a day on which banking institutions are closed in the State or (C) a day on which all of the County’s administrative offices are closed other than due to a Force Majeure Event (which shall be governed by Article 15 of these General Conditions).

**“Casualty”** is defined in Section 11.1 of these General Conditions.

**“Change Event”** means any single or combination of the following events:

- (i) Material discrepancies between actual conditions at the Premises and (A) information regarding the Premises provided to Provider by County subject to Section 10(a)(ii) of Schedule 2 attached hereto, or (B) in the absence of such information, the assumptions reasonably made by Provider regarding the Premises;
- (ii) the discovery of hazardous substances at the Premises not introduced by Provider or its Subcontractors, preexisting hazardous substances not having been rendered harmless by County (i.e., not potentially hazardous to human health) or the release of hazardous substances known to Company to be present at the Premises by County;
- (iii) the discovery of archeological artifacts and/or protected species or plants at the Premises which require removal, abatement, disposal or any other special treatment that adversely affects Provider’s ability to perform the Work or Services;
- (iv) events of Force Majeure;
- (v) County Caused Delay;
- (vi) Approved Financing Change with a negative economic effect on Provider or the applicable ESS;
- (vii) a Change in Law with a negative effect on Provider or the applicable ESS; and
- (viii) damage to the applicable Energy Service System caused by County.

**“Change in Law”** means, after the ESS Effective Date, (i) the enactment, adoption, modification or repeal of any Applicable Law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable Governmental Approval (notwithstanding the general requirements contained in any applicable Governmental Approval 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, which in the case of any of (i), (ii), or (iii) establishes requirements affecting owning, supplying, constructing, installing, operating, or maintaining the Energy Service System, or other performance of Provider’s obligations hereunder and which has a material adverse effect on the cost to Provider of performing such obligations.

**“Change Order”** means a written change order signed by County and by Provider authorizing a change in the Work or Services or Service Charges, or any combination thereof.

**“Claim”** is defined in Section 10.2 of these General Conditions.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Condemnation”** means a temporary or permanent taking by any Governmental Authority as the result or in lieu of in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the applicable Premises, or any interest therein or right accruing thereto, including any right of access thereto affecting such Premises or any part thereof.

**“Confidential Information”** is defined in Section 16.4.1 of these General Conditions.

**“Construction Phase”** means with respect to the ESS, the time period from the execution of the ESS Confirmation to the Installation Date of such ESS.

**“Construction Phase Conditions”** is defined in the introductory paragraph on Schedule 2 attached hereto.

**“Construction Schedule”** is defined in Section 4(e) of the Construction Phase Conditions on Schedule 2 attached hereto.

**“County”** means the County of Monterey, a political subdivision of the State of California.

**“County Data”** means all data or information submitted by or on behalf of County to Provider, including performance data from the Energy Service System.

**“County Energy Service System”** or **“County ESS”** means any energy conservation measures installed or to be installed by Provider at the applicable Premises pursuant to an Energy Service System Confirmation, to be owned by County upon the occurrence of the Installation Date and payment of the Service Charges then due, as agreed in such Energy Service System Confirmation. Such measures may include electric vehicle charging stations, energy and water efficiency systems and equipment, heating, ventilation, and air conditioning systems, and all related equipment, components, and/or systems.

**“County Caused Delay”** means any interruption or delay in the performance of the Work or Services by Provider or Subcontractor to the extent caused by (i) County’s unexcused delay in performance of, or failure to perform, any obligation of County under the Energy Service System Confirmation, including, without limitation, such as the failure to provide reports or documentation necessary for Provider to start or complete its performance of the Work or Services, (ii) any County-requested delay or suspension of the Work or Services disallowed or not contemplated under the applicable ESS Confirmation and not otherwise agreed by the Parties through a Change Order or other amendment to the applicable ESS Confirmation, including, without limitation, such as changes in County budgetary conditions or (iii) the acts, omissions or willful misconduct of County or its employees, or contractors (for the avoidance of doubt, other than Provider), consultants, subcontractors, lenders or agents, including, without limitation, such as willful destruction of any part of the applicable ESS or obstruction of the Work or Services or delays, disruption or interference arising out of County construction or related activity under Section 1(b) of Schedule 2 attached hereto or the ESS Confirmation.

**“County Permitted Lien”** means a Lien against the Premises (for the avoidance of doubt, excluding any Provider ESS and excluding such encumbrances as may be required to allow Provider access to the Premises) for which County (i) has placed the parties having such Lien on notice of the ownership of the applicable Provider ESS and the legal status or classification of such ESS as personal property and if any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the ESS as a fixture of the Premises, County shall provide a disclaimer or release from such lienholder and (ii) has delivered to Provider a subordination and non-disturbance agreement in a form acceptable to Provider from the lienholder.

**“De-Identified”** means anonymized to remove personal information of any individual and identifiers of any entity (including but not limited to name and address).

**“Defaulting Party”** is defined in Section 12.1 of these General Conditions.

**“Defective Work”** means, Work that, in County's reasonable judgment, and to no fault of County, is defective or unsuited for the use intended, faulty, deficient, does not conform to the ESS Confirmation, and does not meet the requirements of any inspection, reference standard, test or approval, described in the ESS Confirmation.

**“Delay Costs”** is defined in Section 6.2.2(a) of these General Conditions.

**“DIR”** means the State of California Department of Industrial Relations.

**“Discrimination”** is defined in Section 7.3.2 of the Construction Phase Conditions on Schedule 2 attached hereto.

**"Drawings"** means, to the extent customarily produced in connection with the installation of the ESS, the graphic and pictorial portions of the ESS Confirmation showing the design, location and dimensions of the Work, generally including, to the extent applicable, plans, elevations sections, details, schedules, and diagrams.

**"Due Date"** means thirty (30) days from County's receipt of the applicable Service Bill.

**"Energy Service System" or "ESS"** means Provider Energy Service System and County Energy Service System (or either Provider Energy Service System or County Energy Service System, as the context may require). When used in the context of an Energy Service System Confirmation, Energy Service System means the Energy Service System(s) that is to be installed and may be managed by Provider and owned by either Provider or County, in accordance with such Energy Service System Confirmation.

**"Energy Service System Confirmation" or "ESS Confirmation"** means the stand-alone agreement, by and between County and Provider for the installation, construction, and operation of any ESS which incorporates these General Conditions (unless otherwise specified therein), and, if applicable, shall include the related Drawings and Specifications and written addenda thereto.

**"ESS Effective Date"** means the ESS Effective Date, as defined in the applicable ESS Confirmation.

**"Event of Default"** is defined in Section 12.1 of these General Conditions.

**"Existing Conditions Data"** is defined in Section 3.1 of these General Conditions.

**"Expiration Date"** means the Expiration Date, as defined in the ESS Confirmation.

**"Extension Term"** is defined in Section 9.2.1 of these General Conditions.

**"Fair Market Value"** means , with respect to any Energy Service System, the price for such Energy Service System that could be negotiated in an arms-length, free-market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction; which price, unless disputed by County pursuant to Section 9.4 of these General Conditions, shall be determined by Provider acting reasonably and in good faith.

**"Financing Costs"** means the "Financing Costs" as defined in the ESS Confirmation.

**"Financing Party"** means with respect to any Energy Service System, any Person providing any financing to Provider in connection therewith.

**"Force Majeure"** means the occurrence of any event or circumstance beyond the reasonable control of County or Provider which results in the failure or delay by such Person of some performance under the Energy Service System Confirmation or the MESA, in full or part, including the following: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; banditry; terrorist activity or a threat of terrorist activity which, under the circumstances, would be considered a precursor to actual terrorist activity; acts of public enemy; economic sanction or embargo; disruption of supply chains, equipment or fuel shortages, pandemic or epidemic (including without limitation, effects of novel coronavirus and/or COVID-19 arising after June 13, 2023); civil strike, work stoppage, slow-down, or lock-out or labor dispute; explosion; fire; earthquake or seaquake; abnormal weather condition; action of the elements; hurricane; flood; lightning; wind; drought; peril of the sea; action or inaction of Governmental Authorities, including Change in Law or the issuance of any final, non-appealable court order that prohibits the transactions contemplated hereby; or failure or unavailability of equipment, supplies or products.

**"General Conditions"** is defined in the preamble to these General Terms and Conditions.

**"Governmental Approvals"** means all licenses, permits, franchises, approvals, authorizations, clearances, consents, waivers, rights, exemptions, releases, variances, or orders of or issued by, or filings with, or notice to, any Governmental Authority under Applicable Law.

**“Governmental Authority”** means any federal, state or local government (whether domestic or foreign), any political subdivision thereof, any regulated utility or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority over the subject matter or Person.

**“hazardous substance”** means any substance on the list of hazardous substances established by the Director of Industrial Relations pursuant to the Labor Code Section 6382, which includes asbestos, lead, toxic chemicals, contaminants, any substance designated by the Environmental Protection Agency as a hazardous substance, and other pollutants and contaminants designated as hazardous or extremely hazardous by any Applicable Law.

**“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 ESS 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 such ESS, (iii) the right to claim investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law (including, for the avoidance of doubt, under Sections 45 or 48 (or cash grants in lieu thereof) of the Code or any state tax law, or income tax deductions thereunder), and (iv) any other attributes, commodity, revenue stream or payment in connection with the ESS (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 ESS, provided that Incentives shall not include RECs. For the avoidance of doubt, Incentives include SGIP payments.

**“Indemnified Party”** and **“Indemnifying Party”** are defined in Section 10.1.1 of these General Conditions.

**“Initial Term”** is defined in Section 9.1 of these General Conditions.

**“Installation Date”** means, with respect to any Energy Service System, the date on which Substantial Completion for such Energy Service System has occurred and Provider has provided a Substantial Completion notification to County.

**“Inverted ESS Savings”** is defined in Section 6.2.1 of these General Conditions.

**“Liabilities”** is defined in Section 10.1.1 of these General Conditions.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority, or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

**“Make Safe Services”** is defined in Section 12.2.1 of these General Conditions.

**“MESA”** means that certain Master Energy Services Agreement made and entered into on June 13, 2023, by and between Mynt and the County, as may be amended or otherwise modified from time to time.

**“Mynt”** means Mynt Systems Inc., a California corporation.

**“Non-Defaulting Party”** is defined in Section 12.1 of these General Conditions.

**“Option Price”** is defined in Section 9.3 of these General Conditions.

**“Party”** or **“Parties”** is defined in the preamble to this of these General Conditions.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, association, or Governmental Authority.

“**Premises**” means, with respect to the Assessment Authorization or the Energy Service System Confirmation, as applicable, the facilities, buildings, and/or real property owned or leased by County described in such Assessment Authorization or Energy Service System Confirmation and includes the applicable Site.

“**Project Manager**” is defined in Section 1(a)(iii) of the Construction Phase Conditions on Schedule 2 attached hereto.

“**Provider**” means Mynt; provided, however, that if Mynt designates an Affiliate to execute any Energy Service System Confirmation, then, for purposes of such Energy Service System Confirmation, all references in these General Conditions to “Provider” shall be deemed to refer to such Affiliate.

“**Provider Energy Service System**” or “**Provider ESS**” means any energy conservation measures installed or to be installed by Provider at the applicable Premises pursuant to an Energy Service System Confirmation, to be owned by Provider as agreed in such Energy Service System Confirmation. Such measures may include electric vehicle charging stations, photovoltaic solar power generating systems or battery energy storage systems or combinations thereof.

“**PSA**” means the Program Services Agreement by and between Mynt Systems Inc. and County effective as of November 9, 2020, as amended by that certain Amendment #1 to Professional Services Agreement, dated August 15, 2022.

“**Public Records Act**” means Division 10 of Title 1 of the California Government Code.

“**Public Works**” is defined in Section 1720 et seq. of the California Labor Code.

“**Purchase Date**” means the Purchase Date, as defined in the ESS Confirmation.

“**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 ESS, provided that RECs shall not include Incentives.

“**Reference Rate**” means the rate as published, from time to time, in The Wall Street Journal as the prime lending rate or “prime rate” plus eight percent (8%) per annum.

“**Representatives**” is defined in Section 16.4.1 of these General Conditions.

“**Samples**” means, to the extent customarily provided by an installer to the customer in the installation of the ESS, representative physical examples of materials, equipment, or workmanship, used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.

“**Service Charge**” means the service charge and any other compensation for any Services or any Work as set forth in the Energy Service System Confirmation.

“**Services**” means all labor, materials, equipment, and services provided or to be provided by Provider as part of the Operation and Maintenance Scope of Work, as set forth in the Energy Service System Confirmation.

“**Service Bill**” is defined in Section 8.1 of these General Conditions.

“**Service Term**” means the Initial Term of the Energy Service System Confirmation, as extended by any applicable Extension Term(s).

“**SGIP**” means a beneficial and time-sensitive funding opportunity under the Self Generation Incentive Program, administered by Pacific Gas & Electric Company as a rebate.

“**Shop Drawings**” means the Drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Provider or any Subcontractor, manufacturer, supplier, distributor, or their agents, and which detail some material portion of the Work for fabrication or installation, as applicable.

“**Site**” means the specific geographical area of the location of the Work and Services.

“**Specifications**” means that portion of the ESS Confirmation consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of Services thereunder.

“**State**” means the State (or States) where the Premises is located.

“**Subcontractor**” means any Person contracted to perform any portion of the Work at the Premises or Services, by Provider or to furnish material worked to a special design according to plans and Specifications of such Work, regardless of the type of Energy Service System Confirmation used.

“**Substantial Completion**” means Substantial Completion, as defined in the ESS Confirmation.

“**Superintendent**” means Provider’s representative at the applicable Premises. The Superintendent directs and coordinates the activities of the various trade groups at the Premises with respect to the Work.

“**Term-End Notice**” is defined in Section 9.2.1 of these General Conditions.

“**Termination Value**” means the Termination Value, as defined in the ESS Confirmation.

“**Transfer Notice**” is defined in Section 13.4 of these General Conditions.

“**Underground Facilities**” means “subsurface installations” as defined in California Government Code § 4216; provided, however, that subsurface installations owned by Provider shall not be included in such definition.

“**USA**” is defined in Section 10(a)(ii) of the Construction Phase Conditions on Schedule 2 attached hereto.

“**Utility**” means the utility or other load serving entity that provides electric service to County at the Premises.

“**Work**” means all labor, materials, equipment, and services provided or to be provided by Provider as part of the ESS Installation Scope of Work, as set forth in the applicable Energy Service System Confirmation.

“**Work Product**” means the Assessments, and all data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by Provider as part of the Work under the ESS Confirmation.

## **Section 1.2 Rules of Interpretation.**

1.2.1 Singular and Plural. Definitions set forth herein shall be equally applicable to the singular and plural forms of the terms defined.

1.2.2 Headings. The headings, subheadings, and table of contents used in any ESS Confirmation are solely for convenience of reference and shall not constitute a part of such ESS Confirmation nor shall they affect the meaning, construction, or effect of any provision thereof.

1.2.3 References to Persons. References to any Person shall include such Person, its successors and permitted assigns and transferees.

1.2.4 References to Provider or County. References to Provider or County shall include employees acting in their capacity as employees and agents acting in such capacity for Provider or County, as applicable.

1.2.5 Technical or trade meanings. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

1.2.6 Agreements as Amended. Reference to any agreement means such agreement as amended, supplemented, or otherwise modified from time-to-time in accordance with the applicable provisions thereof.

1.2.7 Laws as Amended. References to any law include any amendment or modification to such law and any rules or regulations issued thereunder or any legal requirement enacted in substitution or replacement thereof.

1.2.8 Grammatical Forms. Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words "herein," "hereunder," and "hereof" refer to the provisions of the ESS Confirmation unless otherwise specified, as a whole and not to any particular portion or provision of such ESS Confirmation; "including" means "including, but not limited to", and other forms of the verb "to include" are to be interpreted similarly; and references to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.9 Day. References to "days" mean calendar days unless the term "Business Days" is used. If the time for performing an obligation under the ESS Confirmation expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

1.2.10 Gender. References to one gender include the other.

1.2.11 Sections; etc. Unless the context otherwise requires, references to "Section" or "Exhibit" or "Schedule" mean a Section, Exhibit, or Schedule of these General Conditions.

## **Article 2: SUBCONTRACTORS**

### **Section 2.1 Subcontractors; Independent Capacity.**

2.1.1 Subcontractor Engagement. Provider may, without notice to or approval of County, delegate or subcontract any of its obligations under the ESS Confirmation to one or more Subcontractors. No subcontract, delegation, or other engagement with any such Person shall relieve Provider of any of its duties, responsibilities, obligations, or liabilities hereunder.

2.1.2 Subcontract Agreements. Subcontract agreements shall preserve and protect the rights of County under the ESS Confirmation so that subcontracting will not prejudice such rights. Provider is expressly permitted to engage Subcontractors to perform Work, Services or other obligations of Provider under the ESS Confirmation on its behalf, provided, that Provider shall require such Subcontractors' written agreement to be bound to the terms of the ESS Confirmation (including for example, applicable warranties, claims procedures and rules governing submittals of all types to which Provider is subject under such ESS Confirmation) that apply to Subcontractor's performance on behalf of Provider hereunder.

2.1.3 Assignment of Subcontract Agreement Rights; Third Party Beneficiary. Upon the occurrence of the Installation Date for a County ESS or concurrent with a sale of the applicable Provider ESS to County, Provider shall provide for the assignment to County of all rights Provider may have against any manufacturer, supplier, or distributor engaged by any Subcontractor for breach of warranties and guarantees relating to the Work or Services performed by such Subcontractor under the applicable ESS Confirmation. With

respect to any County ESS, the Subcontractor agreements shall provide and acknowledge County as an intended third-party beneficiary of such Subcontractor agreement and supply the ESS Confirmation.

2.1.4 Nothing contained in the ESS Confirmation shall create any contractual relationship between County Project Manager and Provider or any Subcontractor.

2.1.5 The Parties hereto agree that Provider and its Subcontractors are acting in an independent capacity in the performance of the ESS Confirmation, and not as a public official, officer, employee, consultant, or agent of County for purposes of conflict of interest laws or any other Applicable Law.

### **Article 3: SITE; HAZARDOUS SUBSTANCES**

#### **Section 3.1 Familiarity with Site and Local Conditions.**

3.1.1 Prior to executing the ESS Confirmation, Provider shall have visited the applicable Site, familiarized itself with the local conditions under which the Work and Services are to be performed, and correlated its observations with the requirements of the ESS Confirmation. Provider's investigation shall include, if applicable to the ESS, examining of all reports of exploration and tests of subsurface conditions, as-built Drawings, Drawings, Specification(s) or reports, provided by County (a) for contracting purposes or (b) during Provider's pre- ESS Confirmation investigations, of existing above ground and (to the extent applicable) below ground conditions (together, "**Existing Conditions Data**"), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which are described in the ESS Confirmation, and Applicable Law, to the extent any of the foregoing may materially affect cost, progress, performance or furnishing of Work or Services or which materially relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Provider and safety precautions and programs incident thereto. Provider will be entitled to rely upon the accuracy and completeness of all of the aforementioned information so provided by County.

3.1.2 Provider shall provide County with prompt written notice of any conflicts, errors, ambiguities, or discrepancies of any type, that it discovers in or among the ESS Confirmation and the Existing Conditions Data

3.1.3 During performance of the ESS Confirmation, Provider will be charged with knowledge of all Existing Conditions Data and shall not be entitled to Change Orders (time or compensation) due to any specific conditions that Provider knew prior to commencement of the applicable Work.

**Section 3.2 County Documents and Ownership of Documents.** All Specifications, working details, and copies thereof furnished by County are and shall remain the property of County. Such documents shall not be used on any installation not subject to the ESS Confirmation and shall be returned to County on request at the completion of the applicable Work unless Provider expects use thereof to perform the Services.

#### **Section 3.3 Hazardous Substances.**

3.3.1 Subject to Section 10(b)(ii) of the Construction Phase Conditions on Schedule 2 attached hereto, if Provider encounters on the Premises any substance reasonably believed to be a hazardous substance that has not been rendered harmless, i.e., not potentially hazardous to human health, Provider shall immediately stop applicable Work or Services in the area affected and report the condition in writing to County and the Project Manager and any such hazardous substances shall be, at County's sole cost and expense, properly removed or rendered harmless as required by Applicable Law. County shall be responsible for notification to the appropriate Governmental Authority. Each of County and Provider shall promptly notify the other if it becomes aware of any spill or release of any hazardous substances at the applicable Premises, or any notice issued by any Governmental Authority relating thereto.

3.3.2 Neither Provider nor any Subcontractor shall cause or permit any hazardous substance to be brought upon the property or used in the applicable Work or Services without the prior written consent of County. County, Provider, and each Subcontractor shall comply with all Applicable Laws regarding the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation, or disposal of hazardous substances brought onto the property by it.

3.3.3 To the extent contemplated by the Work or Services, any handling, treatment, removal, decontamination, cleanup, transportation, disposal, or disturbance in any of hazardous substances shall only be performed by Provider or any Subcontractor licensed and certified to perform such Work or Service. Any hazardous substance abatement or remediation Work will be performed in such a way that is legally consistent with all Applicable Laws.

3.3.4 Provider shall protect adjoining property and provide barricades, temporary fences, and covered walkways to protect the health and safety of passersby, to the extent required by (and in compliance with) the Energy Service System Confirmation, prudent construction practices, and all Applicable Law to the extent necessitated by Provider (i) bringing a hazardous substance onto the Site or (ii) releasing a hazardous substance preexisting on the Site, the location and existence of which was previously notified to Provider in writing.

3.3.5 County represents and warrants that, to its knowledge after reasonable inquiry, there are no hazardous substances in, on, or under the Premises (i) which have not been disclosed to Provider prior to commencement of any Work or (ii) in violation of Applicable Law. County shall notify Provider in writing of any changes or updates to the status of hazardous substances.

#### **Article 4: LICENSE; COUNTY OBLIGATIONS**

4.1.1 **License; Permitted Uses; Appurtenant Rights; Entry to Premises.** Provider shall notify County of its needs to access Site areas previously identified as sensitive by County at least 24 hours in advance if outside of the normal period of the performance of the applicable Work or Services. County may restrict access to the Site for reasonable security reasons. County grants to Provider a license to enter, use and occupy the Premises to install, operate, inspect, maintain and remove the ESS pursuant to the ESS Confirmation, including the right of ingress, egress, and access to the Premises, as needed for Provider and any other Access Parties to construct, install, operate, inspect, maintain, or remove such ESS; provided, that it does not materially interfere with County operations of the facility. If County operations must be interrupted due to Provider's performance of the Work or Services, Provider must request access in writing at least five (5) days in advance. Provider and each Access Party shall have the appurtenant right to access and use of the Premises in accordance with the ESS Confirmation, including the Access Protocols. During the installation of the ESS, and as needed for its maintenance and removal, County shall provide at no cost to Provider, one or more temporary laydown areas designated for the Access Parties' exclusive use for the storage of equipment and materials to be incorporated into the ESS and any equipment or materials to be used in performing the construction, installation, testing, maintenance, inspection or removal of the ESS. If County is a lessee of the Premises, at Provider's request, County will deliver to Provider a written consent and estoppel signed by County's landlord substantially in the form attached as Schedule 1 to these General Conditions. At Provider's request, County will execute (or if County leases the Premises, will cause its landlord to execute) a memorandum of agreement in such form as may be reasonably requested by Provider, and Provider may, at its sole cost, record such memorandum of agreement with the appropriate land registry or recorder's office. The Parties agree and acknowledge that any license granted hereunder and any Provider rights and landlord and County obligations under any such consent, estoppel or memorandum of agreement related to Provider's access rights to the Premises and Site, shall survive the expiration or termination of the ESS Confirmation for a period of 180 days.

**Section 4.2 Utility Services; Maintenance of Premises and other County Obligations.** County shall (i) provide Provider with access to water and electricity services and sanitary toilet facilities, as needed to install,

construct, operate, maintain and/or remove ESS, (ii) operate and maintain the Premises and all County equipment in good condition in accordance with Applicable Law in order for Provider to provide the Work and Services pursuant to each ESS Confirmation, (iii) cooperate with Provider's reasonable requests to assist Provider in the process of obtaining required agreements, consents, and Governmental Approvals (and if any such agreements, consents, or Governmental Approvals must be in County's name, County shall take such actions as Provider may reasonably require to apply for and obtain them at Provider's cost), (iv) not directly or indirectly cause, create or allow to exist any Lien on the Provider ESS or any interest therein, (v) maintain reasonable security devices and measures at the applicable Premises to ensure the physical security of the Provider ESS, if any, (vi) notify Provider (A) within 24 hours following County's discovery of any malfunction in the operation of the ESS or any occurrences that could reasonably be expected to adversely affect such ESS and (B) immediately upon the discovery of an emergency condition affecting the Provider ESS, if any, (vii) secure and pay for all easements, rights-of-way, and fee interests in land necessary to enable Provider to complete the Work and the Services, (viii) furnish all surveys describing the existing physical characteristics, legal limits, and utility locations for the Site of the ESS (unless specifically provided for in the Specifications, County shall not provide field engineering or construction staking), (ix) furnish information and services under County's control with reasonable promptness to avoid delay in the orderly progress of the Work or Services and (x) forward all communications to the Provider through the Project Manager or a person otherwise designated by the County in writing. Provider may inspect the Premises and County equipment relevant for the Work or Services from time to time and may provide written notice of any material deficiencies to County, and following receipt of any such notice, County will promptly correct or remedy such deficiencies. Any such inspection by Provider shall not relieve County from its obligations hereunder.

**Section 4.3 Obligations Absolute.** With respect to the ESS Confirmation, County's obligations shall be absolute and unconditional, irrespective of (a) any other present or future document, instrument or agreement to which County is or may become a party or liable and which conflicts or interferes with the ESS Confirmation or these General Conditions; (b) the absence of any action to enforce such ESS Confirmation (including this Section 4.3), or any waiver, consent or indulgence of any kind by Provider with respect thereto; (c) the insolvency of County; or (d) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

## **Article 5: ESS OWNERSHIP AND RIGHTS**

### **Section 5.1 Personal Property; Ownership of ESS; Environmental Incentives.**

5.1.1 County and Provider acknowledge, agree, and intend that any Provider ESSs will remain the personal property of Provider and upon installation will not become a fixture of the Premises. Unless and until County purchases the Provider ESS in accordance with the terms of the ESS Confirmation, County shall have no ownership or other interest in the Provider ESS, and Provider shall at all times retain title to and be the legal and beneficial owner of the Provider ESS along with all additions or improvements made thereto; provided, however, that Provider and County hereby agree that all RECs of the applicable Provider ESS shall accrue to, and be for the sole benefit of, County. For the avoidance of doubt, Provider shall own and be entitled to receive all Incentives related to such Provider ESS. County shall take no action that impairs the value to Provider of such Incentives.

5.1.2 County and Provider acknowledge, agree, and intend that risk of loss with respect to any County ESS shall transfer to County on the Installation Date. Title and ownership shall pass upon the occurrence of the Installation Date and payment to Provider of the Service Charges then due with respect to such County ESS per the ESS Confirmation and from and after such date, County shall be the legal and beneficial owner of the County ESS (including, for the avoidance of doubt, associated Incentives, RECs, and any applicable manufacturer warranties which are assignable by Provider and in effect as of the applicable date) along with all additions or improvements made thereto.

5.1.3 Notwithstanding anything in Section 5.1.2 to the contrary, as authorized by § 1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58), County agrees that for the Work with respect to County ESSs, Provider will be the “designer” as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and Provider will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with such Work. On the applicable Installation Date, County agrees to execute a written allocation including a declaration related to Internal Revenue Code § 179D. Provider will prepare the declaration and all accompanying documentation. Provider will be designated the § 179D beneficiary.

5.1.4 Nothing in any ESS Confirmation conveys to County a license or other right to trademarks, copyrights, technology, or other intellectual property of Provider or any Subcontractor.

**Section 5.2 Uniform Commercial Code and Related Filings.** County acknowledges and agrees that at any time during the applicable Service Term, Provider may obtain debt or equity financing or other credit support from Financing Parties in connection with the installation, construction, ownership, operation and maintenance of any ESS and may grant or cause to be granted to Financing Parties a security interest or Lien in the relevant ESS and/or the related ESS Confirmation; provided that no such Lien shall attach to a County ESS to the extent County takes ownership of such County ESS and pays Provider in full for such County ESS. In furtherance of the foregoing, County shall execute any consents to assignment (which may include notice, cure, attornment, and step-in rights) or estoppels and negotiate any amendments to the applicable ESS Confirmation that may be reasonably requested by Provider or any Financing Party; provided that such estoppels and consents to assignment do not alter the fundamental economic terms of the ESS Confirmation. County shall use commercially reasonable efforts to perform such execution and conclude such negotiations within ten (10) Business Days of being notified thereof. Subject to the other provisions of this Section 5.2, County further hereby irrevocably authorizes Provider and any Financing Party to file in any filing or recording office in any Uniform Commercial Code jurisdiction, statements, and amendments that describe Provider’s ownership interests in the applicable ESS or grant of a security interest therein, and provide information required or permitted to be filed and/or recorded. County shall reasonably cooperate with Provider and any Financing Party in making and perfecting such filing(s), including by providing such information as may reasonably be requested by Provider or such Financing Party in connection therewith. Upon (i) expiration or termination of such ESS Confirmation and satisfaction of County’s obligations hereunder in the case of a Provider ESS or (ii) passage of title of a County ESS to County, Provider shall reasonably cooperate with County in releasing any such filing(s).

**Section 5.3 Liens.**

5.3.1 County shall not do or permit any act or omission that shall give rise to any Lien on or with respect to any Provider ESS (including with respect to any form of access rights thereto). County shall, within thirty (30) days of the notice of the filing of any such Lien, at its own expense, take such action to discharge or eliminate any such Lien except any Liens for the benefit of or as the result of any act of Provider or Subcontractor.

5.3.2 Subject to its rights under Section 3.2, Provider shall not (and shall take commercially reasonable actions to ensure that no Subcontractor will) do or permit any act or omission that shall give rise to any Lien on or with respect to the Premises or County ESS except for those Liens which Provider (or Subcontractor) is permitted by Applicable Law to place on the Premises or County ESS following non-payment by County of amounts due under the applicable ESS Confirmation. Provider shall, within thirty (30) days of the notice of the filing of any such Lien, at its own expense, discharge, or eliminate any such Lien. Notwithstanding the foregoing, in the event and to the extent that any such Lien results from County’s failure to pay Provider undisputed amounts as and when due under the ESS Confirmation, neither Provider nor any Subcontractor shall have an obligation under this Section 5.3.2 to cause any such Lien to be removed, discharged or released until such amounts are paid.

5.3.3 County agrees that (i) it shall place each Person having an interest in or Lien on the Premises on notice of the Provider ESS’s legal status as Provider’s personal property and (ii) upon Provider’s

request, County shall provide to Provider (A) a non-disturbance agreement executed by such Person and (B) a written acknowledgment by such Person affirming that such Person has no property or security interest in the Provider ESS, each in a form acceptable to Provider.

**Section 5.4 County Data.** As between Provider and County, County exclusively owns all rights, title, and interest in and to all County Data except for Provider's rights expressly granted herein. To the extent a license is required for Provider's use of any County Data to perform the Work and Services and to access and use, and permit its service providers (including Subcontractors) to access and use, County Data to perform such Work and Services, County hereby grants Provider and its Subcontractors a limited license in respect thereto as necessary to perform such Work and Services.

## **Article 6: ESS INSTALLATION; CHANGE ORDERS AND OPERATIONS**

### **Section 6.1 Installation.**

6.1.1 Prior to executing an ESS Confirmation and to the extent the Work or Services consist of Public Works, County must have registered the ESS with the California Department of Industrial relations, using Form PWC-100.

6.1.2 The Construction Phase Conditions shall apply during the Construction Phase.

### **Section 6.2 Change Orders; Change Events.**

6.2.1 Requested Change Orders. Any changes to the scope of Work or Services under the ESS Confirmation, and any related changes in the Service Charges, Construction Schedule and/or performance schedule mutually agreed shall be confirmed in a Change Order except in an emergency endangering life or property and subject in all cases to Section 6.2.2(a) below. Either Party may propose a Change Order by giving the other Party written notice of the proposed changes. Provider will use commercially reasonable efforts to notify County of any added costs, Delay Costs, changes to the Service Charges, Construction Schedule and/or performance schedule and/or any other terms of the ESS Confirmation that will be required as a result of such proposed Change Order. Provider shall not be required to make any change to the Work or Services without a Change Order signed by County and Provider. County shall use commercially reasonable efforts to cause the Monterey Board of Supervisors to authorize the applicable administrative officer to consent to and enter into any Change Order on behalf of County; provided, however, that such Change Order alone or in the aggregate with other Change Orders does not cause the total estimated energy savings as calculated under the applicable Assessment and stated in the applicable ESS Confirmation for the related ESS to be negative with the inclusion of the applicable Change Order(s) updates (the "**Inverted ESS Savings**"). Each ESS Confirmation shall further describe the Change Order process and timelines applicable to the underlying ESS.

6.2.2 Change Events.

6.2.2(a) Change Event Change Orders. Subject to Section 10(c)(iv) of Schedule 2 attached hereto and notwithstanding anything in Section 6.2.1 to the contrary, following the occurrence of any Change Event (the determination of which, if disputed by County, shall be subject to the dispute resolution process described in Section 16.2) which shall be notified by the Party discovering such Change Event to the other Party within two (2) Business Days, Provider shall be entitled to a Change Order or amendment to the ESS Confirmation reflecting equitable adjustments to the applicable Service Charges and/or changes to performance schedule(s) required as a result of such Change Event in accordance with this Section 6.2.2(a). If any Change Event occurs for the ESS that extends, in Provider's reasonable determination, the time required for such ESS to reach Substantial Completion and/or that adversely impacts Provider's ability to perform the Services, Provider shall be entitled to a Change Order pursuant to which County shall pay without offset to Provider, the total of all substantiated additional costs (including construction costs) plus all Financing Costs associated with such Change Event

(collectively, “**Delay Costs**”), and any changes to performance schedule(s) required as a result of such Change Event will be revised to equitably account for such Change Event. If County fails to sign and deliver any Change Order or amendment to which the Provider is entitled under this Section 6.2.2(a) or Section 6.3 within thirty (30) days of providing or receiving notice of the related Change Event, Provider shall have the right to terminate the ESS Confirmation without either Party having further liability to the other Party except (i) for any accrued liabilities arising prior to such termination, if the applicable Change Event occurs prior to the commencement of installation for the applicable ESS or such Change Event is of the nature described in either subsection (iv) or subsection (vii) (provided such Change in Law (A) is not the result of any application or action of County and (B) does not render Provider’s performance under the applicable ESS Confirmation illegal or impossible) of the Change Event definition or (ii) for payment of the Termination Value by the County associated with the applicable ESS, if the applicable Change Event occurs after commencement of installation for the applicable ESS and such Change Event is of the nature described in subsections (i)-(iii), (v), (vi), (viii), and subsection (vii) (provided such Change in Law (X) is the result of any application or action of County and (Y) renders Provider’s performance under the applicable ESS Confirmation illegal or impossible) of the Change Event definition.

6.2.2(b) Amounts Payable due to Change Events. For any and all amounts due from County to Provider as a result of a Change Event, the applicable Change Order shall include the updated Service Charge reflecting such amounts and any Delay Costs due from County to Provider.

**Section 6.3 Emergencies and Malfunctions.** Except in emergencies, County shall not without the prior written approval of Provider, and except as expressly provided in the ESS Confirmation, interfere with or remove, move, alter, or modify any part of any Provider ESS. County shall use its best efforts to promptly notify Provider of the occurrence of any significant malfunction, alteration, or change in any Provider ESS or the Premises, that materially impacts such Provider ESS. Notwithstanding anything else in these General Conditions to the contrary, in the event of any emergency or malfunction, Provider and any Access Party shall be granted reasonable access promptly make repairs or corrections as it may, in its discretion, determine are needed subject to the ESS Confirmation. In any emergency affecting the safety of persons or property, Provider shall act, at its discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Provider on account of emergency Work shall be determined as provided in Sections 6.2; provided that if the emergency occurred to not fault of Provider, Provider shall be entitled to a Change Order thereunder.

**Section 6.4 Maintenance, Operation, and Monitoring.** Unless otherwise specified in the ESS Confirmation, after the end of the Construction Phase, (i) any Provider ESS shall be operated, maintained, and monitored by Provider and (ii) any County ESS shall be operated, maintained, and monitored by County; provided, however, that County shall in each case be responsible for (A) the cost to repair any damage to any such ESS that was caused by County or its employees or agents or contractors (other than Provider) and (B) performing any operation, maintenance and/or monitoring activities with respect to any such ESS or the Premises that are designated as County obligations in the ESS Confirmation. Notwithstanding anything else in the ESS Confirmation (including, for the avoidance of doubt, these General Conditions) to the contrary, in connection with its obligations to operate, maintain, and monitor the Provider ESS, Provider may remove, modify, replace, or add to any Provider ESS (or portion thereof) or otherwise suspend the operation of the Provider ESS with at least forty eight (48) hours advanced written notice to County; provided, however, that Provider shall not be required to give such notice in cases of emergencies. Provider shall use commercially reasonable efforts to conduct such removal, modification, replacement or addition in a manner that does not unreasonably disrupt County’s operations at the Premises.

**Section 6.5 Materials.**

6.5.1 Quality of materials. Unless otherwise specified, all major components shall be new and both workmanship and materials shall be of good quality.

6.5.2 Substitution of materials. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by the name of the manufacturer, such specification shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal," and Provider may, unless otherwise stated, offer any material, process, or article which shall in every respect be substantially equal to or better than that specified. In the event Provider furnished material, processes, or articles are more expensive than those specified, the difference in cost so furnished shall be borne by Provider.

**Section 6.6 Safety.** With respect to the Work and Services, Provider shall take all reasonable precautions for the safety of, and shall provide all commercially reasonable protection to prevent damage, injury, or loss to (i) all Provider or County employees on the Work and Services and all other persons at the Site, (ii) all the materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of Provider or any Subcontractor, and (iii) other property at the Site or adjacent thereto, including trees, sidewalks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

## **Article 7: PUBLIC WORKS AND OTHER REQUIREMENTS**

**Section 7.1 ESS as Public Works.** To the extent the Work or Service constitutes Public Works, Provider shall comply with all related Applicable Law and the terms and conditions of this Article 7 (including, without limitation, Section 7.8.1) shall apply to Provider, the ESS, and the ESS Confirmation. The enumeration of such Applicable Law in this Article 7 is not intended to be exhaustive.

### **Section 7.2 Apprenticeships.**

7.2.1 Compliance with Labor Code apprenticeship requirements. Provider and all Subcontractors shall comply with the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7, pertaining to apprentices, and with all applicable regulations pursuant thereto (Title 8, California Code of Regulations, Sections 200 et seq., especially Sections 227 et seq.), including, but not limited to, provisions relating to required or permitted ratios of apprentices to experienced workers. When any question exists concerning these requirements, Provider and/or any Subcontractor concerned should contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one (1) of its branch offices, prior to commencement of Work.

7.2.2 State policy. It is State policy to encourage the employment and training of apprentices on Public Works Contracts (as defined in the California Labor Code) in conformity with standards set by Applicable Law.

### **Section 7.3 Non-Discrimination Provisions**

7.3.1 Non-discrimination in employment practices. Provider shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of discrimination (as defined below). The provision of Work or Services primarily or exclusively to such target population as may be designated in the Energy Service System Confirmation shall not be deemed to be prohibited discrimination.

7.3.2 "**Discrimination**" defined. As used in the Energy Service System Confirmation, the term "discrimination" includes, but is not limited to, the illegal denial of equal employment opportunity, harassment (including sexual harassment and violent harassment), disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or any other prohibited discriminatory practice. The term also includes any act of retaliation.

7.3.3 Application of Monterey County Code, Chapter 2.80. The provisions of Monterey County Code (MCC), Title 2, Chapter 2.80, apply to activities conducted pursuant to the MESA and the ESS Confirmation. Provider and its officers and employees, in their actions under the ESS Confirmation or MESA, as applicable, are agents of the County within the meaning of MCC Chapter 2.80, and are responsible for ensuring that their workplace and the services that they provide are free from discrimination, as required by MCC Chapter 2.80. Complaints of discrimination made by Provider, Subcontractor(s), or any of their employees or agents against County may be investigated and resolved using the procedures established by MCC Chapter 2.80. Provider shall establish and follow its own written procedures for the prompt and fair resolution of discrimination complaints made against Provider by its own employees, agents and third parties, and shall provide a copy of such procedures to County upon demand by County.

7.3.4 Compliance with Applicable Laws. During the performance of the Energy Service System Confirmation or the MESA, as applicable, Provider shall comply with all Applicable Laws which prohibit discrimination, including the following:

7.3.4(a) California Labor Code Section 1735;

7.3.4(b) California Fair Employment and Housing Act, Government Code Sections 12900 et seq., and the administrative regulations issued thereunder, Title 2 California Code of Regulations, Sections 7285.0 et seq. (Division 4 – Fair Employment and Housing Commission);

7.3.4(c) California Government Code Sections 11135 – 11139.5 (Title 2, Div. 3, Part 1, Chap.1, Art. 9.5) and any applicable administrative regulations issued thereunder;

7.3.4(d) Federal Civil Rights Acts of 1964 and 1991 (see especially Title VII, 42 USC Sections 2000d et seq.), as amended, and all administrative rules and regulations issued thereunder (see especially 45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;

7.3.4(e) The Rehabilitation Act of 1973, Sections 503 and 504 (29 USC Sections 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;

7.3.4(f) Americans With Disabilities Act of 1990 (P.L. 101- 336), as amended, 42 USC Sections 12101 et seq., and 47 USC Sections 225 and 611, and any federal regulations issued pursuant thereto (see 24 CFR Chapter 1; 28 CFR Parts 35 and 36; 29 CFR Parts 1602, 1627 and 1630; and 36 CFR Part 1191);

7.3.4(g) Unruh Civil Rights Act, California Civil Code Sections 51 et seq.; and

7.3.4(h) Monterey County Code, Title 2, Chapter 2.80, as amended and procedures issued pursuant thereto.

7.3.5 Written assurances. Upon request by County, Provider will give any written assurances of compliance with the Civil Rights Acts of 1964 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990, as amended, and/or Executive Order 11246, as may be required by the federal government in connection with the Energy Service System Confirmation, pursuant to 45 CFR Section 80.4 or 45 CFR Section 84.5 or other applicable state or federal regulations.

7.3.6 Written nondiscrimination policy. Provider shall maintain a written statement of its nondiscrimination policies, which shall be consistent with the terms of the Energy Service System Confirmation and as applicable, the MESA. Such statement shall be available to Provider's employees, County, County's officers and employees, and members of the public, upon request.

7.3.7 Notice to labor unions. Provider shall give written notice of its obligations under Section 7.3.4 to labor organizations with which it has a collective bargaining or other agreement.

7.3.8 Access to records by government agencies. Provider shall permit access by County and by representatives of the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission, and any federal and/or state agency providing funds for the applicable Energy Service System Confirmation or MESA, as applicable, upon reasonable notice at any time during normal business hours, but in no case on less than twenty-four (24) hours notice, to such of its books, records, accounts, facilities, and other sources of information as the inspecting party may deem appropriate to ascertain compliance with these nondiscrimination provisions.

7.3.9 Binding on Subcontractors. The provisions of Section 7.3.4 shall also apply to all of Provider's Subcontractors. Provider shall include the nondiscrimination and compliance provisions of such sections in all Subcontracts to perform Work or Services under the Energy Service System Confirmation.

#### **Section 7.4 Hours of Work**

7.4.1 Eight (8) hour day; forty (40) hour week. No Work or Services shall be performed by employees of Provider in excess of eight (8) hours per day or forty (40) hours during any one (1) week, unless such employees are compensated for all such excess hours at not less than one-and-one half times the basic rate of pay, as provided in Labor Code Section 1815. Holiday Work when permitted by Applicable Law shall also be compensated at not less than one-and-one half times the basic rate of pay.

7.4.2 Penalties. Pursuant to Labor Code Section 1813, Provider shall forfeit, as a penalty to County, \$25 for each worker employed in the execution of the Energy Service System Confirmation by Provider or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the Labor Code Sections 1810 through 1815.

7.4.3 Approvals. Provider will not be entitled to additional compensation for Work or Services performed outside of regular working hours, except to the extent such compensation is approved in advance, in writing, by County. If so approved, such compensation shall in such event cover only the direct cost of the premium portion of the time involved, when permitted, and be without any overhead or profit.

#### **Section 7.5 Prevailing Wages**

7.5.1 Prevailing wage rates determined. The Director of the California Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which said Public Work is to be performed for each craft, classification, or type of worker needed to execute the applicable Energy Service System Confirmation in accordance with Labor Code Sections 1770 through 1775. Copies of the prevailing rate of per diem wages are on file and shall be made available to any interested party on request in the RMA – Public Works, Parks and Facilities office located at 1441 Schilling Place, Second Floor, Salinas California 93901. Current prevailing wage rate schedules can also be found at the California Department of Industrial Relations website located at <http://www.dir.ca.gov/DLSR/PWD/>.

7.5.2 Payment of prevailing wage rates required. Provider and all Subcontractors performing Work or Services under the Energy Service System Confirmation shall pay wages to their workers employed on such Work or Services at not less than the general prevailing rate of per diem wages for such Work or Services, as required by Labor Code Section 1771.

7.5.3 Penalties. Failure to pay such prevailing wages shall subject the employer to the penalties set forth in Labor Code Section 1775.

7.5.4 Wage and Hour Laws. Provider stipulates that it shall comply with all applicable wage and hour laws, including California Labor Code Section 1776 and Sections 1810 through 1815. Failure to so comply shall constitute a default under the Energy Service System Confirmation.

## **Section 7.6 Payroll Records**

7.6.1 Compliance with Labor Code Section 1776. Provider and all Subcontractors shall comply with Labor Code Section 1776 as may be amended from time to time. Provider shall be responsible for compliance with these provisions by his /her/its Subcontractors.

7.6.2 Accurate payroll records required. Provider and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, Work/Service classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker, or other employee employed by him/her/it in connection with the Public Works.

7.6.3 Certification and inspection of payroll records.

7.6.3(a) The payroll records enumerated under Section 7.6.2 shall be certified and shall be available for inspection at all reasonable hours at the principal office of Provider or Subcontractor on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

2. A certified copy of all payroll records enumerated in Section 7.6.2 shall be made available for inspection, or furnished upon request, to a representative of County, and/or the Division of Labor Standards Enforcement of the Department of Industrial Relations (DIR).

3. A certified copy of all payroll records enumerated in Section 7.6.2 shall be made available upon request to the public for inspection or copies thereof made; provided however, that a request by the public shall be made through County, or the Division of Labor Standards Enforcement of the DIR. The public shall not be given access to such records at the principal offices of Provider.

7.6.4 Filing of records. Provider and each Subcontractor shall file a certified copy of the records enumerated in Section 7.6.2 with the entity that requested such records within ten (10) days after receipt of a written request.

7.6.5 Elimination of personal identification. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County, or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Provider or Subcontractor awarded the Energy Service System Confirmation or performing the same shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor management committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29 USC 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

7.6.6 Notice to County concerning location of records. Provider and each Subcontractor shall inform County as to the location of the records enumerated under Section 7.6.2 including the street address, city, and county, and shall within five (5) Business Days, provide a notice of any change of location and address.

7.6.7 Notice of noncompliance; penalties.

7.6.7(a) The Provider or Subcontractor has ten (10) days in which to comply subsequent to receipt of a written notice requesting the records enumerated in Section 7.6.2.

7.6.7(b) In the event that the Provider or Subcontractor fails to comply with the ten (10) day period, he/she/it shall, as a penalty to County, forfeit one hundred dollars (\$100) for each day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from service charge payments then due.

Notwithstanding anything else in these General Conditions to the contrary, Provider is not subject to a penalty assessment pursuant to this Section 7.6.7(b) due to the failure of a Subcontractor to comply with this Section 7.6.7(b).

7.6.8 DIR Requirements. Provider and Subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (Division of Labor Standards Enforcement of the DIR). Additionally, the Provider shall submit electronic certified payroll records to Project Manager or as otherwise designated by the County with each application for payment and/or concurrent with the required monthly submittal to the DIR.

## **Section 7.7 Additional Requirements**

### 7.7.1 Audits.

7.7.1(a) If the Energy Service System Confirmation involves the expenditure of public funds in excess of \$10,000, the Parties shall be subject to the examination and audit in accordance with Applicable Laws and the State Auditor of the State of California for a minimum period of three (3) years after final payment under such Energy Service System Confirmation, as required by Government Code Section 8546.7. The examination and audit shall be confined to those matters connected with the performance of such Energy Service System Confirmation, including, but not limited to, the costs of administering such Energy Service System Confirmation.

7.7.1(b) With respect to any change in the Work, other than based on an agreed lump sum price, resulting in an increase in the Service Charge listed the Energy Service System Confirmation or extension of the Construction Schedule, Provider shall cause its Subcontractors to afford access to County at all reasonable times to any books, correspondence, instructions, receipts, vouchers, memoranda, and records of any kind relating thereto, all of which each of them shall maintain for a period of at least three (3) years from and after the date County makes final payment on account of such change in the Work. During the Construction Phase, Provider and its Subcontractors shall make the same available within ten (10) days following receipt by Provider of County's notification of its intent to audit, failing which Provider's claim for an increase in the Service Charge and/or extension of the Construction Schedule, as applicable, shall be tolled until such access is granted. Provider authorizes County, and shall cause its Subcontractors to authorize County, to check directly with any suppliers of labor and material with respect to any item chargeable to County under this Section 7.7.1(b), to confirm balances due and to obtain sworn statements and waivers of lien, all if County so elects.

7.7.2 Assignment of antitrust causes of action. Provider and all Subcontractors are bound by Public Contract Code Section 7103.5, which provides as follows:

In entering into a Public Works Contract or a Subcontract to supply goods, services, or materials pursuant to a Public Works Contract, Provider or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Public Works Contract or the Subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Provider, without further acknowledgment by the parties.

7.7.3 Royalties and patents. As relates to the Energy Service System Confirmation and the related ESS, Provider shall pay all royalties and license fees that arise prior to the Installation Date. Provider shall defend all suits or Claims for infringement of any patent rights and shall save County, harmless from loss on account thereof, except that County shall be responsible for all such loss (i) when a particular design, process, or the product of a particular manufacturer or manufacturers is specified but Provider has notified County that it has reason to believe that the design, process, or product specified is an infringement of a patent or (ii) the Claim

relates infringement by reason of County's particular use of the applicable ESS not in conformance with the applicable ESS Confirmation, combination of intellectual property incorporated into such ESS with other intellectual property, or other actions by County.

### **Section 7.8 Compliance with Certain Applicable Laws**

7.8.1 Compliance with Applicable Laws. Each Party shall keep fully informed of and shall comply with all Applicable Law (including, without limitation, as relates to Public Works) affecting the Energy Service System Confirmation, or MESA, as applicable, Work, Services, and persons connected with such Work and Services, and shall protect and indemnify the other Party and its officers, employees, consultants and agents against any Claim and related attorney's fees, arising from or based on violation of Applicable Law by such Party or its employees, agents or Subcontractors, as applicable, subject to Sections 10.2 and 10.3. If Provider observes that applicable Work or Services to be performed are in material variance with Applicable Law, he/she/it shall promptly provide a written notification to the Project Manager or such other person as designated by County in writing, and any necessary changes shall be adjusted by appropriate Change Order and County shall assume full responsibility for its related directions and therefore, and shall bear all costs attributable thereto. If Provider performs any Work or Services knowing it to be contrary to Applicable Laws without such notice to the Project Manager or such other person as designated by County in writing, Provider shall assume full responsibility therefore, and shall bear all costs attributable thereto.

7.8.2 Rules of governing agencies. All Work, Services, and materials shall be in full accordance with the rules and regulations of the State Fire Marshall, the construction safety orders of the Division of Industrial Safety of the DIR, and all other Applicable Laws.

7.8.3 Compliance with uniform codes. All Work, Services, and materials shall comply with the current editions of the California Building Code, the California Electric Code, the California Plumbing Code, the California Mechanical Code, and the California Administrative Code, and Title 18 of the Monterey County Code.

7.8.4 Statutory regulation of Public Works.

7.8.4(a) The Energy Service System Confirmation and related Work and Services shall comply with all statutes of the State of California regulating the performance of Work and Services by a public agency or political subdivision of such state, and particularly the following:

1. Public Contract Code Sections 4100-4114 (Subletting and Subcontracting Fair Practices Act).
2. Labor Code Sections 1720-1743 (Public Works, Scope, and Operation).
3. Labor Code Sections 1770-1781 (Public Works, Wages).
4. Labor Code Sections 1810-1815 (Public Works, Working Hours).

7.8.4(b) Compliance with Clean Air and Clean Water Acts. Provider and all Subcontractors shall comply with the Federal Clean Air Act (42 USC Sections 1857 et seq. and 42 USC Sections 7401 et seq.) and with the Federal Clean Water Act (33 USC Sections 1251 et seq.) and all other applicable federal air and water pollution control rules and regulations.

7.8.4(c) Federally funded contracts. If the applicable ESS is funded in whole or in part by grants or loans from the federal government, Provider and all Subcontractors shall comply with regulations adopted by the U.S. Secretary of Labor pursuant to 40 USC Section 276c and with all other statutes, rules, and regulations that are applicable because of such federal funding.

7.8.4(d) Kickbacks and illegal withholdings of pay. Provider and all Subcontractors shall comply with the provisions of Labor Code Sections 221 and 222, which prohibit kickbacks and withholdings from employee wages.

7.8.4(e) Illegal fees. Provider and all Subcontractors shall comply with the provisions of Labor Code Sections 1778, 1779, and 1780, which prohibit the taking of any portion of the wages of workers employed on Public Works Projects and the collection of certain fees from workers employed on Public Works ESSs and from applicants for such employment.

7.8.4(f) Good faith effort to employ Monterey Bay Area residents. For all provisions of the good faith effort to employ Monterey Bay area residents, see Provider's Certification of Good Faith Effort to Employ Monterey Bay Area Residents as attached to these General Conditions as part of Schedule 3.

7.8.4(g) Employment of undocumented aliens. Provider must comply with California Public Contract Code Section 6101 which provides that no state agency or department, as defined in Public Contract Code Section 10335.7, that is subject to the Public Contract Code, shall award a Public Works or purchase contract to a bidder or contractor or Provider, nor shall a bidder or contractor or Provider be eligible to bid for or receive a Public Works or purchase contract, who has, in the preceding five (5) years, been convicted of violation of a state or federal law respecting the employment of undocumented aliens.

7.8.4(h) Child Support Compliance. In accordance with California Public Contract Code Section 7110 Provider and any and all Subcontractors recognize the importance of child and family support obligations and shall fully comply with all Applicable Laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and, Provider and Subcontractor, to the best of their knowledge, are fully complying with the earnings assignment orders of all employees and is/are providing the names of all new employees to the "New Hire Registry" maintained by the California Employment Development Department.

## **Article 8: SERVICE CHARGES**

**Section 8.1 Service Charge; Service Bills; and Due Date.** On the Installation Date and, if applicable, and in accordance with the ESS Confirmation, continuing through the Service Term, County shall pay Provider the Service Charge as set forth in the ESS Confirmation. As applicable, pursuant to the terms of the ESS Confirmation, Provider will perform or cause to be performed any measurement and verification services that are required in order to calculate or reconcile the Service Charge payable to Provider pursuant to the ESS Confirmation. Provider shall provide service bill(s) (a "**Service Bill**") for the Service Charge(s) for each Billing Period, as applicable. County shall pay without offset, abatement, or reduction for any reason whatsoever to Provider the applicable Service Charge(s) no later than the Due Date. County shall be solely responsible for its internal accounts payable processes and procedures necessary to timely pay a Service Bill. Provider shall submit each Service Bill to County by email, and then County shall route and process such Service Bill as needed to ensure timely payment. County and Provider agree and acknowledge that a prepayment as may be required under the ESS Confirmations may be financed through an Approved Financing.

**Section 8.2 Service Bill Dispute Resolution.** If County in good faith disputes a Service Bill, County shall provide Provider with a written explanation, and County shall be responsible for paying the entire Service Bill including the disputed amount no later than the Due Date. All such disputes shall be resolved as provided in Section 16.2. If any disputed amount paid by County is determined not to be owed to Provider, Provider shall refund such disputed amount to County within thirty (30) days of such determination, with the interest accrued at the Reference Rate from the original Due Date (or such later date, if such amount is received thereafter) until the date refunded.

**Section 8.3 Provider Work Product.** The Work Product produced or owned by Provider may not be used by County as a basis for facility construction or implementation of the ESS developed herein by any entity

other than Provider without the prior written consent of Provider, to be provided in its sole and absolute discretion. Any unauthorized use of the Work Product will be at County's sole risk and without liability to Provider, and County will defend, indemnify and hold harmless, Provider, its Subcontractors, and their directors, employees, and agents from any and all Liabilities associated with or resulting from such use.

## **Article 9: TERM; PURCHASE OPTIONS**

**Section 9.1 Term.** The initial term of the ESS Confirmation (the "**Initial Term**") shall commence on the ESS Effective Date and shall expire on the Expiration Date, unless earlier terminated in accordance with its terms or extended in accordance with Section 9.2.

### **Section 9.2 Termination or Extension.**

9.2.1 Extension Terms; Term-End Notices. If at the end of the Initial Term or any Extension Term, (i) in the case of an ESS Confirmation for a Provider ESS, County has not timely exercised its option to purchase the Provider ESS pursuant to Section 9.3, or (ii) with respect to any ESS Confirmation, such ESS Confirmation has not expired and neither Party has provided a Term-End Notice as described below, then the Service Term shall automatically extend for one (1) year unless the ESS Confirmation provides otherwise (each such period, an "**Extension Term**") and the Service Charges thereunder shall be escalated as provided in the applicable ESS Confirmation. Not less than 90 days prior to the expiration of such Initial Term or any then-applicable Extension Term, either Party may give the other Party written notice (a "**Term-End Notice**") of its desire to terminate the then current term.

#### 9.2.2 End of Term; Termination.

9.2.2(a) Upon the expiration or other termination of the ESS Confirmation, with respect to a Provider ESS, at Provider's sole discretion, Provider may elect to abandon the Provider ESS at the Premises by delivering written notice to County. Upon County's receipt of Provider's notice of abandonment of the Provider ESS, the title to the Provider ESS shall transfer to County as-is, where is, free and clear of all Liens (other than statutory Liens), and without any liability or obligation of Provider. The Parties agree that the applicable ESS Confirmation shall specify the estimated decommissioning cost for such Provider ESS.

9.2.2(b) With respect to a Provider ESS, if at the end of the Initial Term or any Extension Term (as applicable), (i) County has not exercised its option to purchase the Provider ESS pursuant to Section 9.3 and (ii) neither Party has elected to terminate the ESS Confirmation in accordance with Section 9.2.1, and (iii) Provider has not issued a notice of its intent to abandon the Provider ESS pursuant to Section 9.2.2(a), then Provider shall remove the Provider ESS from the Premises no later than 180 days after such termination. County shall provide sufficient space for the temporary storage of tools, materials, and equipment, and Access Party vehicle parking and such other facilities reasonably necessary during removal of the Provider ESS.

9.2.2(c) For the avoidance of doubt, Provider shall have no obligation to remove any County ESS from the Premises upon the expiration or termination of the Initial Term or any Extension Term (as applicable), except to the extent expressly set forth in an ESS Confirmation.

**Section 9.3 County Purchase Options.** On any Purchase Date, with respect to Provider ESSs, so long as County is not in default under the related ESS Confirmation, County may elect to purchase the Provider ESS covered by such ESS Confirmation, if any, for a purchase price (the "**Option Price**") equal to the greater of (a) the Fair Market Value of such Provider ESS as of the Purchase Date and (b) the applicable Termination Value as of the Purchase Date. To exercise its purchase option, County shall, not less than 90 days before the proposed Purchase Date, provide written notice to Provider of County's intent to exercise the same on such Purchase Date which notice shall be irreversible other than as specified in this Section 9.3. Within thirty (30) days of receipt of County's notice, Provider shall send written notice to County that sets forth the Option Price for such Provider ESS, which

notice shall also include Provider's determination of the Fair Market Value. County shall then have a period of thirty (30) days after receipt of the Option Price notice from Provider to confirm its decision to exercise the purchase option, retract such decision, or dispute the Fair Market Value in accordance with Section 9.4 below. If County confirms its exercise of the purchase option in writing to Provider (whether before or after any appraisal rendered in accordance with Section 9.4 below) then, on the Purchase Date, (a) the Parties shall execute all documents necessary to (A) transfer title to the Provider ESS to County on the Purchase Date, as-is, where is, free and clear of all Liens, and (B) assign any manufacturer warranties for the Provider ESS to County which are assignable and in effect as of the Purchase Date, and (b) County shall pay the Option Price to Provider by wire transfer in accordance with Provider's written instructions. The applicable ESS Confirmation shall terminate automatically effective upon execution of such documents and payment of the Option Price.

**Section 9.4 Determination of Fair Market Value.** If within thirty (30) days of receipt of the Option Price notice described in Section 9.3 above, County disputes Provider's determination of Fair Market Value in writing and the Fair Market Value is greater than the applicable Termination Value, then the Parties shall mutually select an independent appraiser with experience and expertise in energy technologies similar to the Provider ESS to determine the Fair Market Value thereof, which shall be set forth in a written valuation opinion delivered to the Parties. The appraiser's valuation shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by County if the newly determined Fair Market Value is higher than or equal to the Fair Market Value previously determined by Provider. If the newly determined Fair Market Value is lower than the Fair Market Value previously determined by Provider, the cost of the appraisal shall be borne by Provider.

**Section 9.5 Change in Law; Approved Financing Change.** If any (i) Change in Law or (ii) Approved Financing Change with respect to the ESS occurs that materially reduces the cost to Provider of performing its obligations under the ESS Confirmation, then the Parties shall, within thirty (30) days following receipt by County from Provider of notice of such occurrence, meet and attempt in good faith to negotiate amendments to the ESS Confirmation as are reasonably necessary to fairly apportion the economic value improvement of the ESS Confirmation to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then County shall have the right to terminate the ESS Confirmation without further liability to either Party except with respect to payment of (i) any accrued liabilities arising prior to such termination if such termination occurs prior to the commencement of installation for the applicable ESS or (ii) payment of the Termination Value by the County associated with the applicable ESS, if the applicable termination occurs after commencement of installation for the applicable ESS.

## **Article 10: INDEMNITY**

### **Section 10.1 Indemnification.**

10.1.1 General Indemnity. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and its directors, officers, shareholders, partners, agents, employees, Affiliates, successors-in-interests, Financing Party (if applicable), and assigns (each, an "**Indemnified Party**") from and against all loss, damage, expense, and liability to the extent resulting from a claim, action, suit, proceeding, demand, investigation, or assessment (including court costs and reasonable attorney's fees) (collectively, "**Liabilities**") that is made or brought by an unaffiliated third party for (i) any injury or death to any person or (ii) destruction of real or tangible personal property of third parties arising out of, or in connection with, the performance of these General Conditions, to the extent such claims, liabilities or losses do not arise out of an act or omission or negligence of an Indemnified Party. Provider and County shall be responsible for their own negligence, acts or omissions. This Section 10.1.1, however, shall not apply to liability arising from the presence or release of any form of hazardous substances, such matters being addressed exclusively under Section 10.1.2.

10.1.2 Hazardous Substances. Each Party shall indemnify, defend and hold harmless the other Party's Indemnified Parties from and against all Liabilities arising out of or relating to hazardous substances to the extent deposited, spilled, otherwise caused to be or transported to at, on, above, below, or near the Premises by such Party or its agents. County shall indemnify, defend and hold harmless Provider's Indemnified Parties from and against all Liabilities arising out of or relating to hazardous substances present at, on, above, below, or near Premises prior to the commencement of the applicable Work.

**Section 10.2 Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party prompt written notice with respect to any Liabilities 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. Failure to give prompt notice will not diminish the Indemnifying Party's obligations under this Article 10 to the extent such failure does not materially prejudice the Indemnifying Party's ability to defend the 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 Indemnified Party. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnified Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim or consent to any entry of judgment covered by this Section 10.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided that it shall not be unreasonable for an Indemnified Party to withhold consent to any settlement or entry of judgment (i) that provides for injunctive or other non-monetary relief affecting the Indemnified Party, or (ii) if such judgment or settlement does not provide for an unconditional and full release of the Indemnified Party, diminishes any rights of the Indemnified Party under the ESS Confirmation(s), or results in additional fees or charges to the Indemnified Party.

**Section 10.3 Limitation on Claims.** The Indemnifying Party's liability for any Claim eligible for indemnification hereunder shall be decreased to the extent arising out of the Indemnified Party's own proportional negligence and/or willful misconduct.

## **Article 11: CASUALTY; CONDEMNATION; INSURANCE**

**Section 11.1 Casualty.** If any part of the Premises or any ESS is damaged, lost, or destroyed, for any reason including without limitation by fire, flood, or other casualty that does not also constitute a Force Majeure event which shall be governed by Article 12 or a Change Event (a "Casualty"), County shall give prompt notice of such Casualty to Provider. If Provider decides in its sole discretion that as a result of a Casualty, the performance of any Provider ESS or any Work or any Services is expected to be impaired, Provider shall be permitted to terminate the affected ESS Confirmation upon written notice to County. In the event of such termination of an ESS Confirmation for a (i) Provider ESS, to the extent not otherwise covered by Provider insurance, County shall reimburse Provider for any removal costs of such Provider ESS and shall pay any unpaid amounts for Work and Services (including, in each case, any fees, expenses, penalties or other costs related to materials ordered) performed by Provider under such ESS Confirmation and County shall have the option to purchase the applicable ESS for the applicable Termination Value and (ii) County ESS, County shall pay the Termination Value as set forth in the relevant ESS Confirmation, in each case within sixty (60) days of Provider's written notice of termination. Upon Provider's receipt of the Termination Value for the applicable Provider ESS within such period, the title to such Provider ESS shall transfer to County as-is, where is, free and clear of all Liens, and without any liability or obligation of Provider.

**Section 11.2 Condemnation.** County shall promptly give Provider notice of the actual or threatened commencement of any Condemnation proceedings that would materially affect any ESS. In the event of any taking by Condemnation or otherwise, Provider shall be permitted to terminate the affected ESS Confirmation upon

written notice to County. In the event of a termination by Provider pursuant to this Section 11.2, County shall pay Provider (i) the applicable Termination Value as set forth in the relevant ESS Confirmation in the case of a Provider ESS and (ii) any and all unpaid amounts for any Work or Services (including, in each case, any fees, expenses, penalties or other costs related to materials ordered) performed by Provider in the case of a County ESS, within sixty (60) days of Provider's written notice. Upon Provider's receipt of such Termination Value, the title to the relevant Provider ESS, to the extent not already vested in County, shall transfer to County as-is, where is, free and clear of all Liens, and without any liability or obligation of Provider if not already vested in County.

**Section 11.3 Insurance.** Required insurance coverages of each of County and Provider with respect to an ESS Confirmation shall be set forth in the applicable ESS Confirmation, as such insurance coverage requirements may be modified or supplemented pursuant to such ESS Confirmation. Notwithstanding anything in the foregoing to the contrary, each of Provider and County has the option to self-insure to meet any required insurance coverages. Each Party further acknowledges that the other Party may maintain, on its behalf, insurance policies with self-insured retentions or large deductibles and that payments made or amounts retained by such Party or its Affiliates towards satisfying any self-insured retentions, deductibles or similar thresholds thereunder shall not constitute actual receipt of insurance proceeds.

**Section 11.4 Evidence of Coverage.** With respect to insurance requirements for the MESA, prior to or concurrent with the execution of the MESA, Provider shall provide a "Certificate of Insurance" certifying that coverage as required therein has been obtained. With respect to insurance requirements for the ESS Confirmation, prior to or concurrent with the execution of the ESS Confirmation, Provider shall provide a "Certificate of Insurance" certifying that coverage as required therein has been obtained. Individual endorsements executed by the insurance carrier shall accompany each such certificate. In addition, the Provider upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to County's contracts/purchasing department, unless otherwise directed in writing. Provider shall not commence the applicable Work under such ESS Confirmation until it has obtained all required insurance thereunder and provided evidence thereof in compliance with this Section 11.4 to the County. Provision of such evidence shall neither relieve nor decrease the liability of the Provider.

## **Article 12: DEFAULTS, REMEDIES, LIMITATION OF LIABILITY**

**Section 12.1 Events of Default.** A Party that fails to perform under the ESS Confirmation in the manner listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**", the other Party shall be deemed to be the "**Non-Defaulting Party**", and each event of default shall be an "**Event of Default**":

12.1.1 a Party fails to maintain the insurance coverages required and does not cure such failure within five (5) Business Days of notice of cancellation, non-renewal, or lapse;

12.1.2 County loses its rights to occupy and enjoy the Premises, other than pursuant to a transfer of the Premises in compliance with Section 13.4;

12.1.3 County ceases to conduct business operations at the Premises for a period of 90 consecutive days or more;

12.1.4 County fails to provide Provider with access to, on, over, under, and across the Premises and the ESS or otherwise prevents Provider from performing the Work or Services for a period of more than five (5) days;

12.1.5 failure of a Party to pay any amount due and payable under the ESS Confirmation within thirty (30) days following receipt of written notice from the Non-Defaulting Party of such failure to pay;

12.1.6 if any representation or warranty made by a Party in the ESS Confirmation proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, and the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

12.1.7 failure of a Party to perform any other material obligation under the ESS Confirmation that (i) by its nature is not curable or (ii) if by its nature is curable, is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party of such failure; provided, that such 30-day cure period shall be extended if and to the extent reasonably necessary to cure such failure, if (A) the Defaulting Party initiates such cure within the 30-day period and continues to diligently pursue such cure and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure; or

12.1.8 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, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within 120 days following receipt of a written notice from the Non-Defaulting Party demanding such cure.

## **Section 12.2 Remedies for Default.**

12.2.1 County's Remedies. If an Event of Default by Provider has occurred and is continuing under the ESS Confirmation, in addition to any other remedies, and subject to Section 16.2, County may terminate the ESS Confirmation and exercise any other remedy it may have at law or equity or under the ESS Confirmation. With respect to any Provider ESS, if County terminates the related ESS Confirmation due to an Event of Default by Provider, County may purchase the affected Provider ESS at the then-current Option Price in accordance with the terms and applicable procedures of Section 9.3. Upon any such termination, if County elects not to purchase the affected Provider ESS, Provider may remove such Provider ESS or abandon it in place. If Provider elects to abandon the Provider ESS, title thereto shall transfer to County as-is, where is, free and clear of all Liens (other than statutory Lines), and without any liability or obligation of Provider. For any partially completed County ESS and partially completed Provider ESS that County opts to purchase under this Section 12.2.1, Provider shall be fully paid for Work (including Make Safe Services) provided in connection with such partially completed ESS. Prior to stopping the provision of any Work with respect to such ESS, Provider shall take commercially reasonable precautions for the safety of, and commercially reasonable steps to prevent damage, injury, or loss to, County's employees and property on the applicable Premise due to the provision of Work related to such ESS (the "**Make Safe Services**"). Provider will not be responsible for such safety or damage, injury or loss unless Provider's negligence in the performance of its Services (including Make Safe Services) is the proximate cause thereof.

12.2.2 Provider's Remedies. If an Event of Default by County has occurred and is continuing under the ESS Confirmation, Provider may (i) suspend performance of its obligations under the ESS Confirmation, (ii) terminate the ESS Confirmation or (iii) do both of the foregoing. If Provider terminates an ESS Confirmation due to an Event of Default by County, as Provider's sole remedy upon such termination, County shall pay upon Provider's demand an amount equal to the sum of (x) the Termination Value applicable to the year in which such termination occurs, (y) the costs incurred by Provider to remove the ESS from the Premises (to the extent that Provider elects to remove such ESS), and (z) any unpaid Service Charges or other amounts owed to Provider as of the date of such termination. The Parties agree and acknowledge that to the extent that Provider's remedies under this Section 12.2.2 or payment of a Termination Value in accordance with the General Conditions (other than under Section 9.3) are held to be liquidated damages, the same shall not be a penalty, would be difficult to impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss.

**Section 12.3 No other Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES UNDER THE ESS CONFIRMATION OR MESA AS APPLICABLE, PROVIDER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER OR THEREUNDER AS APPLICABLE (INCLUDING ANY SERVICES, GOODS, MATERIALS, OR OTHER ITEMS SUPPLIED HEREUNDER OR THEREUNDER), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE.

### **Article 13: ASSIGNMENT**

**Section 13.1 Assignment Generally.** The MESA and the ESS Confirmation will inure to the benefit of, and be binding upon, the parties thereto and their representatives, successors, permitted assigns, and other legal representatives. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Provider.

**Section 13.2 Assignment by County.** County may not assign the MESA or the ESS Confirmation or the rights thereunder or any interest therein without Mynt's prior written consent with respect to the MESA and Provider's prior written consent with respect to the ESS Confirmation. Without prejudice to the foregoing, no assignment shall relieve County of its obligations hereunder and County shall remain primarily liable for such obligations unless otherwise agreed by Mynt or Provider, as applicable in writing. Any assignment, transfer, or pledge of the MESA or the ESS Confirmation in contravention of this Section 13.2 shall be void and of no force or effect.

#### **Section 13.3 Assignment by Mynt or Provider.**

13.3.1 Mynt shall not assign Mynt's rights or obligations under the MESA or any interest therein without the prior written consent of County, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, notwithstanding anything in the foregoing to the contrary, without the prior consent of County, Mynt may (i) assign the MESA to a proposed assignee who has the financial capability and experience necessary to perform Mynt's obligations under the MESA; provided, however, that a proposed assignee with at least five (5) years of experience in conducting energy assessments and installing energy conservation measures and an excess of total assets over liabilities of not less than \$10,000,000, shall be deemed to have the financial capability and experience necessary to perform Mynt's obligations under the MESA, (ii) assign the MESA to (A) any of its Affiliates or (B) any Person succeeding to all or substantially all of the assets of Mynt; provided, that, Mynt is not released from liability under the MESA as a result of any assignment to an Affiliate unless such assignee assumes Mynt's obligations thereunder by binding written instrument, and (iii) assign, mortgage, pledge, or otherwise directly or indirectly assign its interests in the MESA to any financing party or any entity through which Mynt is obtaining financing from a financing party.

13.3.2 Provider shall not assign Provider's rights or obligations under the ESS Confirmation or any interest therein without the prior written consent of County, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, notwithstanding anything in the foregoing to the contrary, without the prior consent of County, Provider may (i) assign such ESS Confirmation to a proposed assignee who has the financial capability and experience necessary to perform Provider's obligations under such ESS Confirmation; provided, however, that a proposed assignee satisfying the Minimum Assignment Criteria (as defined in the applicable ESS Confirmation), shall be deemed to have the financial capability and experience necessary to perform Provider's obligations under such ESS Confirmation, (ii) assign such ESS Confirmation to (A) any of its Affiliates or (B) any Person succeeding to all or substantially all of the assets of Provider; provided, that, Provider is not released from liability under such ESS Confirmation as a result of any assignment to an Affiliate unless such assignee assumes Provider's obligations thereunder by binding written instrument, and (iii) assign, mortgage, pledge, or otherwise directly or indirectly assign its interests in such ESS Confirmation (and the related

Provider ESS, if applicable) to any Financing Party or any entity through which Provider is obtaining financing from a Financing Party.

13.3.3 The financing parties referenced in Section 13.3.1 and the Financing Parties referenced in Section 13.3.2 shall have the right but not the obligation to assume the MESA or ESS Confirmation, as applicable in the event Mynt or Provider becomes a Defaulting Party thereunder. For the avoidance of doubt, in the event such right is exercised, such exercising party shall, in writing, assume all obligations under the ESS Confirmation or MESA, as applicable, as well as all of Mynt's or Provider's rights and interests thereunder and thereafter shall become the successor-in interest to Mynt or Provider thereunder, as applicable. The applicable assignee shall have the right, but not the obligation, to cure any default by Provider or Mynt and County shall cooperate with such assignee in any effort to timely cure such default. In furtherance of the foregoing financing arrangements and in addition to any other rights or entitlements of Provider under the ESS Confirmation and of Mynt under the MESA, County shall timely execute any consents to assignment (which may include notice, cure, attornment, and step-in rights) or estoppels and negotiate any amendments to the applicable agreement that may be reasonably requested by Mynt, Provider or any of the financing parties or Financing Parties; provided, that such estoppels, consents to assignment, or amendments do not alter the fundamental economic terms of the MESA or the applicable ESS Confirmation.

13.3.4 Where prior written consent to assignment from County is not required hereunder, Provider or Mynt, as applicable, shall provide prior written notice of assignment except for any assignments to Financing Parties (in the case of the ESS Confirmation) or other financing parties (in the case of the MESA). Any Financing Party with respect to the ESS Confirmation or other financing party referenced in Section 13.3.1 with respect to the MESA, shall be an intended third-party beneficiary of this Section 13.3.

13.3.5 Any assignment by Provider or Mynt, as applicable, without the required prior written consent of County, if any, shall not release such Person of its obligations hereunder.

**Section 13.4 Transfer of the Premises.** Notwithstanding anything in Section 13.2 to the contrary, if County decides to sell or transfer the Premises (including by any sublease) or ceases to conduct business operations at the Premises or vacates the same, County shall provide Provider at least 90 days' prior written notice thereof (a "**Transfer Notice**"). In such case, County shall either (i) assign the ESS Confirmation to the transferee of such Premises; provided, that, County is not released from liability under such ESS Confirmation by reason of the assignment unless the assignee assumes County's obligations thereunder by binding written instrument on terms satisfactory to Provider, including as to the assignee's creditworthiness or (ii) with respect to a Provider ESS underlying such ESS Confirmation, notify Provider through the Transfer Notice of County's intent to purchase the Provider ESS (in accordance with the applicable procedures of Section 9.3) on the Purchase Date specified in the ESS Confirmation with respect to such sale or transfer. If County elects to purchase the Provider ESS or Provider declines to approve an assignment of the ESS Confirmation within 90 days, County shall purchase the Provider ESS at the then-current Option Price in accordance with the applicable procedures of Section 9.3 on or before the effective date for the sale or transfer of the Premises specified in the Transfer Notice.

#### **Article 14: REPRESENTATIONS AND WARRANTIES**

**Section 14.1 Authorization; Enforceability; Compliance with Applicable Law.** Each Party represents to the other Party that such Party is duly organized, validly existing and in good standing under the laws of the state of its formation; the execution and delivery by such Party of the MESA or the ESS Confirmation, as applicable, and its performance thereunder has been duly authorized, does not and will not require any further approval of any other Person; the execution, delivery and performance by such Party of the MESA or the ESS Confirmation, as applicable, will not (i) violate any agreement to which it is a party or by which it or any of its properties or assets is bound, or any valid court or regulatory order or (ii) subject any ESS to any Lien other than as contemplated or

permitted by the ESS Confirmation; the ESS Confirmation or MESA, as applicable, constitutes a legal and valid obligation of such Party, enforceable against such Party, except as may be limited by bankruptcy, or other laws relating to creditors' rights generally and general principles of equity; and such Party is not a party to any pending, or to the best of its knowledge threatened, proceeding, investigation, or controversy that would materially and adversely affect such Party's ability to perform thereunder. The Parties shall perform their obligations under the MESA or the ESS Confirmation, as applicable, in compliance with any and all Applicable Laws.

**Section 14.2 Additional Representations of County.** County represents that: (i) County owns or leases the Premises, (ii) if County owns the Premises, it owns the Premises free and clear of all Liens other than County Permitted Liens; (iii) if County leases the Premises, (A) County's lease is in full force and effect and constitutes a valid and binding obligation of County, enforceable against County in accordance with its terms, (B) there are no material disputes or legal proceedings between County and County's landlord under such lease, (C) neither County nor, to the knowledge of County, County's landlord is in default under, nor, has any event occurred and is continuing which, with notice or the lapse of time or both, would result in a default under the lease, whether caused by County or, to the knowledge of County, County's landlord, and (iv) all information provided to Provider by County or its agents is true and complete in all material respects.

## **Article 15: FORCE MAJEURE**

**Section 15.1 Effect of Force Majeure.** If a Party or Subcontractor (on behalf of Provider) is rendered wholly or partly unable to perform the applicable obligations under the ESS Confirmation or MESA because of Force Majeure, it shall be excused (and in the case of a Subcontractor, Provider shall be excused) from whatever performance is affected by the Force Majeure to the extent and for the duration so affected, provided that: (i) such Party (including Provider with respect to a Subcontractor), as soon as reasonably practical after the Force Majeure event, gives the other Party prompt oral notice, followed by written notice, fully describing the particulars of the occurrence (noting that any delay in notice shall not restrict the ability to claim Force Majeure relief, except and only to the extent that such delay has exacerbated the underlying problem); (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure; and (iii) such Party or Subcontractor uses its reasonable efforts to remedy its inability to perform as soon as possible.

### **Section 15.2 Termination for Force Majeure.**

15.2.1 If despite the best efforts of both Parties to remedy a Force Majeure event, a Force Majeure event continues for more than 180 days, either Party may in its sole discretion, do any or all of the following: (i) subject to Section 15.3, suspend performance of its obligations hereunder for the duration that is required by the Force Majeure; and (ii) terminate any affected ESS Confirmation or MESA, as applicable, upon thirty (30) days' prior written notice to the other Party; provided that if Provider is the terminating Party of an ESS Confirmation with respect to a Provider ESS, Provider shall remove the affected Provider ESS, if any, at its cost.

15.2.2 With respect to any Provider ESS, if County terminates the ESS Confirmation due to Force Majeure pursuant to Section 15.2.1, County shall pay, within sixty (60) days of such termination, the applicable Termination Value(s) as set forth in the ESS Confirmation, plus all other amounts due and owing under the ESS Confirmation (including any applicable sales or other transfer tax), at which point title to the affected Provider ESS shall transfer to County as-is, where-is, free and clear of all Liens (other than statutory Liens). Provider shall execute such documentation as may be reasonably necessary to perfect and secure County's ownership rights. Provider shall not be obligated to repair or restore the Premises or remove the affected Provider ESS under this Section 15.2.2. With respect to a County ESS, if County terminates the ESS Confirmation due to a Force Majeure pursuant to Section 15.2.1, County shall reimburse, within sixty (60) days of such termination, Provider for all Work performed and not yet paid for the installation of the ESS up to the termination date, plus all other amounts due and owing, if any, under the ESS Confirmation (including any applicable sales or other transfer tax)

**Section 15.3 Payment Obligations Not Excused.** At all times while the Force Majeure is continuing, with respect to its obligations under the ESS Confirmation, County shall pay, without offset, to Provider (i) if the Force Majeure occurs prior to any Installation Date, all related Financing Costs as defined in the ESS Confirmation as they accrue, and (ii) if the Force Majeure occurs on or after any Installation Date, all Service Charges then due and all Service Charges as they accrue and become payable or as they would have accrued and become payable under the ESS Confirmation but for the Force Majeure event. County shall pay such Service Charges by the Due Date. Notwithstanding anything in this Article 15 to the contrary, no payment obligation arising under the ESS Confirmation shall be excused by such event of Force Majeure.

## **Article 16: MISCELLANEOUS**

**Section 16.1 Governing Law.** The MESA, the ESS Confirmation, and any dispute concerning the MESA or the ESS Confirmation shall be governed by the laws of the State of California, without regard to the choice of law provisions thereof.

**Section 16.2 Resolution of Disputes.** Any dispute, claim, or controversy arising out of or relating to the ESS Confirmation or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of the ESS Confirmation to arbitrate, shall be determined by binding arbitration before one arbitrator in Santa Cruz, California. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the arbitration award may be entered in any court having jurisdiction. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. If the Parties mutually agree, a mediator may be consulted prior to arbitration.

**Section 16.3 Taxes.** Provider shall pay all business or license taxes, fees, or permits related to the procurement and installation of all ESSs at the Premises before the Installation Date. County shall pay, if applicable to County, for (i) all such taxes, fees, and permits after the Installation Date, (ii) all business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees, sales taxes, consumption taxes, delivery taxes, use taxes or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any Governmental Authority upon County's or Provider's use and operation of the ESS or imposed on any Service Payment, or similar taxes, and (iii) all real and personal property taxes relating to the ESS or the real property on which the Premises is situated.

### **Section 16.4 Confidentiality; Publicity; Trade Secrets.**

16.4.1 If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted, or trademarked information, and/or technical information regarding the financing, design, operation, and maintenance of the ESS ("**Confidential Information**") to the other or, if in the course of performing under the ESS Confirmation (or MESA, as applicable) or negotiating the ESS Confirmation (or MESA, as applicable) a Party learns Confidential Information regarding the facilities or plans of the other, the receiving 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 and performance of the ESS Confirmation. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the MESA or the ESS Confirmation or potential acquirers of Provider or its Affiliates (provided and on condition that such third parties be bound by a duty of obligation at least as restrictive as contained herein) (collectively, "**Representatives**"), in each case whose access is reasonably necessary. Each Party shall be liable (with respect to the other Party) for any breach of this provision by any Person to whom that Party, or one of its Representatives, improperly discloses Confidential Information as though such breach was committed by such disclosing Party. The

terms of the ESS Confirmation (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 16.4.1, except as set forth in Section 16.4.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party; provided that County may be required to otherwise maintain and retain any information, including Confidential Information, pursuant to California Government Code § 34090, County records retention policies and procedures, and the California Public Records Act.

16.4.2 Notwithstanding any other provision herein, Confidential Information does not include information that (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, provided, that a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16.4.3 Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the MESA or the applicable ESS Confirmation, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the MESA or the applicable ESS Confirmation; provided, that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo, or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, County agrees that Provider may, at its sole discretion, take photographs of the installation process of the ESS and/or the completed ESS, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including use in brochures, advertisements, websites, and news outlet or press release articles. Unless prior written consent has been received from County, the images shall not include any identifying information without County permission and the Premises shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

16.4.4 If any materials or information provided by Provider to County under the MESA or an ESS Confirmation are designated in writing and/or marked by Provider as a "trade secret" or otherwise exempt from disclosure under the Public Records Act and if a third party makes a request for disclosure of the materials thereunder, as soon as practical (but not later than ten (10) Business Days) after receipt of such request, County will notify Provider of such request; however, County's failure to provide such notice shall not constitute a breach of or default under the MESA or applicable ESS Confirmation. Within ten (10) Business Days after a third party's request for disclosure of materials under the Public Records Act, Provider will, in writing, (a) authorize County to release the documents or information sought; or (b) if Provider reasonably believes that the information is exempt from disclosure, advise County not to release the materials, and at Provider's own cost, may seek to prevent the disclosure of the materials. A failure to so advise County not to release the materials will be deemed authorization to release the materials. In the event that Provider advises County to not release the materials and County complies with such request, Provider shall, to the fullest extent permitted by Applicable Law, indemnify, hold harmless, release and defend County, its officers, employees, and agents from and against any and all Liabilities that may be asserted by any person or entity, to the extent arising out of a third party's request for disclosure of such materials under the Act. This indemnification obligation will continue to bind the Parties after the termination of the MESA and applicable ESS Confirmation, as applicable, and shall be in addition to any other indemnification obligation provided therein.

16.4.5 Notwithstanding anything in the MESA or the ESS Confirmation to the contrary, County shall have sole and absolute discretion in complying with the Public Records Act (Gov. Code § 7920.000 et seq.) and shall not be liable to Mynt or Provider for the release of any information pursuant thereto, provided, that County, in releasing such information, (i) is acting under a good faith belief that the Public Records Act requires such release, (ii) has notified Mynt or Provider, as applicable, of its intent to release such information, and (iii) to the extent permitted under Applicable Law, has consulted with Mynt or Provider, as applicable, regarding such release, prior to such release.

**Section 16.5 Cooperation; Further Assurances.** Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request pursuant to this Section 16.5.

**Section 16.6 Complete Agreement; Amendment; Counterparts.** The ESS Confirmation and MESA, respectively, including all attachments, schedules, and exhibits thereto, represent the entire agreement between County and Mynt or County and Provider, as applicable, with respect to the subject matter of such agreements and supersede all prior negotiations, representations, or agreements thereof, whether oral or written. These agreements may be amended only by a written instrument signed by both applicable Parties. An amendment to one ESS Confirmation will not amend or otherwise affect the terms or effectiveness of another ESS Confirmation. An amendment to the MESA will not amend any existing ESS Confirmation unless expressly agreed by the Parties to such ESS Confirmation, but will apply to any ESS Confirmations entered into on or after the date of such amendment. The MESA and each ESS Confirmation may be executed in one or more counterparts and delivered in original or electronic form, any one or all of which shall constitute but one agreement.

**Section 16.7 Invalidity of Particular Provisions; Joint Preparation.** If any provisions of the MESA or the ESS Confirmation in any circumstances are held to be invalid or unenforceable, then the remaining provisions of the MESA or such ESS Confirmation in any other circumstances will not be affected thereby and will be valid and enforceable to the fullest extent permitted by Applicable Law. Preparation of the MESA has been a joint effort by County and Mynt Systems Inc. and the applicable ESS Confirmation has been a joint effort of County and Provider and the resulting documents shall not be construed more severely against one of the parties thereto than against the other.

**Section 16.8 Relationship of the Parties.** Nothing contained in any ESS Confirmation or MESA, nor any act of a Party thereunder will create a partnership or joint venture relationship between such Parties. County and Project Manager, in performing their duties and responsibilities under the ESS Confirmation, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Provider, any Subcontractor or supplier, except for those set forth expressly in such ESS Confirmation.

**Section 16.9 Prohibited interests.** No official of County who is authorized in such capacity and on behalf of County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any Subcontract in connection with the applicable ESS, shall become directly or indirectly interested financially in the Energy Service System Confirmation or in any part thereof. No officer, employee, attorney, engineer, or inspector of or for County who is authorized in such capacity and on behalf of County to exercise any executive supervisory or other similar functions in connection with construction of such ESS shall become directly or indirectly interested financially in such Energy Service System Confirmation or in any part thereof.

**Section 16.10 Municipal Advisor.** THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER MYNT NOR PROVIDER IS A MUNICIPAL ADVISOR AND NEITHER CAN GIVE ADVICE TO COUNTY WITH RESPECT TO MUNICIPAL

SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS. NEITHER MYNT NOR PROVIDER IS SUBJECT TO A FIDUCIARY DUTY AS A MUNICIPAL ADVISOR WITH REGARD TO COUNTY OR THE PROVISION OF INFORMATION TO COUNTY.

**Section 16.11 No Waiver; Survival of Obligations.** Failure by either Party to exercise or enforce any of its rights under the MESA or the ESS Confirmation will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. Waiver of any performance or breach of the MESA or the ESS Confirmation will not constitute a waiver of any subsequent performance or breach of a requirement herein and will be limited to the specific performance breach waived. Notwithstanding any termination of the ESS Confirmation, all obligations that have accrued thereunder before termination shall survive until paid or satisfied. Any sums due from either Party that would be payable, or are incapable of calculation until, after the expiration of or earlier termination of the ESS Confirmation, shall survive and remain a continuing obligation until paid. Any obligations of either Party that by the terms hereof are to be performed after the expiration or earlier termination of the ESS Confirmation shall survive and remain a continuing obligation until performed.

**Section 16.12 Service Contract.** The Parties under the ESS Confirmation intend the ESS Confirmation to be a “service contract” within the meaning of Section 7701(e)(3) of the United States Code. The Parties under the MESA intend the MESA to be a “service contract” within the meaning of Section 7701(e)(3) of the United States Code. County shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchaser of Services provided by Provider or services under the MESA.

**Section 16.13 Contractual rights and remedies not exclusive.** The duties and obligations imposed by the MESA and the ESS Confirmation and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies, otherwise imposed or available by Applicable Law, except as otherwise specified herein.

**Section 16.14 County Forms.** On the applicable ESS Effective Date, or if required by the County, prior to such ESS Effective Date, each Provider shall complete and execute, as applicable, forms required by the County and attached to these General Conditions as Schedule 3.

**Schedule 1– General Conditions**  
**Form of Landlord Consent and Estoppel**

**LANDLORD CONSENT AND ESTOPPEL AGREEMENT**

This **LANDLORD CONSENT AND ESTOPPEL AGREEMENT (“Agreement”)** is made as of \_\_\_\_\_, by \_\_\_\_\_ with an address at \_\_\_\_\_ (“**Landlord**”).

**RECITALS**

A. Landlord is the owner of the land and improvements commonly known as \_\_\_\_\_ more specifically described in Exhibit A attached hereto (“**Property**”) and the owner of the Landlord’s interest in the lease identified in Recital B below (“**Lease**”).

B. Reference hereby is made to that certain lease dated \_\_\_\_\_, between Landlord and The County of Monterey, a political subdivision of the State of California (“**Tenant**”) [recite any amendments and memorandum] (Said lease is collectively referred to herein as the “**Lease**”). The premises leased to Tenant pursuant to the Lease is referred to herein as the “**Premises**.”

C. Tenant has or is about to enter into a Energy Systems Confirmation issued under a Master Energy Services Agreement (the “**Transaction Documents**”) with [Provider Name] or an affiliate or subsidiary thereof (“**Provider**”), which grants to Provider and other “**Access Parties**” identified therein rights of ingress, egress, and access to the Premises to construct, install, own, operate, and maintain one or more Energy Service Systems (the “**Transaction**”).

NOW, THEREFORE, in consideration of ten dollars and other good and valuable consideration, Landlord hereby agrees and represents as follows, to the best of Landlord’s knowledge:

1. **Consent; Lease Effective.** Landlord consents to the Transaction and the rights granted to Provider and the other Access Parties identified therein. The Lease has been duly executed and delivered by the parties thereto and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no modifications or additions to the Lease, written or oral, other than those, if any, which are referenced above in Recital B. Tenant is in possession of the Premises.

2. **Personal Property.** Landlord acknowledges and agrees that certain Energy Service System(s) will remain the personal property of Provider (as specified in the Transaction Documents) and upon installation will not become a fixture of the Premises, unless and until Tenant purchases such Energy Service System(s) in accordance with the terms of the Transaction Documents.

3. **No Default:** (a) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease either by Tenant or Landlord; and (b) neither Landlord nor Tenant has any existing claims, defenses or offsets against rental due or to become due under the Lease.

4. **Entire Agreement.** The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights of any kind whatsoever with respect to the Property, other than as set forth in the Lease.

5. **Expiration Date.** The term of the Lease will expire on \_\_\_\_\_.

6. **No Other Assignment.** Landlord has received no notice, and is not otherwise aware of, any other assignment of the Tenant's interest in the Lease.

7. **Reliance.** Landlord acknowledges that Provider is relying on this Agreement, and Landlord's consent provided herein, in connection with entering into the Transaction.

*[Signature and Notary Acknowledgment on Following Page]*

IN WITNESS WHEREOF, Landlord has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LANDLORD]

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

Name:

Title:

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

Notary Public

**EXHIBIT A TO LANDLORD CONSENT AND ESTOPPEL AGREEMENT**

Legal Description

*[Insert]*

**Schedule 2 – General Conditions**  
**Construction Phase**

With respect to any ESS and related ESS Confirmation and the Parties' rights and obligations thereunder, the following General Conditions- Construction Phase (the "**Construction Phase Conditions**") shall only apply during the Construction Phase:

1. County's Administration of Work; Project Manager.

a. County's Observation Of The Work

- i. Work shall be performed under County's general observation and with respect to County ESSs, administration. Provider shall comply with County's directions and instructions in accordance with the terms of the ESS Confirmation. County's failure to review shall not be deemed a waiver or approval of any nonconforming aspect of Work.
- ii. Subject to those rights specifically reserved in the ESS Confirmation, County will not supervise, or direct, or have control over, or be responsible for, Provider's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Provider's failure to comply with Applicable Laws. County will not be responsible for Provider's failure to perform or furnish the Work in accordance with the ESS Confirmation.
- iii. County may engage, an independent consultant or project manager (who, in each case, must be a qualified individual or firm authorized by and acting on behalf of County to be responsible for coordinating time, equipment, money, tasks and people for all or specified portions of the applicable ESS, each, and collectively, and each of their replacements, the "**Project Manager**") to assist in administering the Work on County's behalf. Project Manager is authorized by County to act on behalf of County and the acts and omissions of Project Manager, including the provision of information, instructions and directions to Provider, are deemed for purposes of the ESS Confirmation to be those of County. The Project Manager shall represent County and all communications given to the Provider shall be as binding as if given to Provider by County directly; provided, however, that if County withdraws such authorization by written instrument and provides written notice of the same and the authorization of the replacement Project Manager to Provider, then as of the date of receipt by Provider of such notice, the former Project Manager shall no longer be authorized under the ESS Confirmation to act on behalf of County and the replacement Project Manager shall be deemed to act on behalf of County. The Project Manager will not be responsible for or have control over the acts or omissions of Provider, Subcontractors or their agents or employees, or any other persons performing Work.
- iv. The Project Manager may review Provider's submittals, such as Shop Drawings, product data, and Samples, but only for conformance with design concept of Work and with information given in the ESS Confirmation.

- v. The Project Manager may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with the ESS Confirmation. Based on its observations, the Project Manager may recommend to County that it disapproves or rejects Work that Project Manager believes to be defective or will not produce a complete ESS that conforms to such ESS Confirmation or will prejudice the integrity of the design concept of the completed ESS as a functioning whole as indicated by such ESS Confirmation. County will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.
  - vi. The Project Manager may conduct inspections in order to verify the Installation Date and will receive and forward to County for review written warranties and related documents required to be delivered to County under the ESS Confirmation.
- b. County's Right Of Access To The Work.
- i. During performance of the Work, County and the Project Manager may at any time enter upon Work, shops or studios where any part of the Work may be in preparation.
  - ii. Provider shall adjust its schedule and fully coordinate with utility districts and County for proper and safe access to the Site for the utility district, if applicable.
  - iii. County may perform with its own forces, construction related to an ESS, or the related Site during performance by Provider of the Work and may, in connection with other portions of the ESS, award separate contracts to subcontractors in connection with construction on the applicable Site or areas contiguous to such Site; provided, however, in each case, that, (a) such construction and related activity, including, without limitation, the nature and the areas of the applicable construction and activity, timing thereof, and parties/personnel involved, be specified and described in the applicable ESS Confirmation in form and substance to Provider's reasonable satisfaction unless the construction is necessitated by emergency or is required maintenance, (b) County provides Provider three (3) Business Days' prior written notice before any commencement or recommencement of such construction and related activity, and (c) Provider shall in no way be liable or responsible for any such construction or related activity.
- c. Organization of ESS Confirmations not controlling. The organization of the Specifications into divisions, sections, and articles, and the arrangement of the plans or working details shall not control Provider in dividing the Work among Subcontractor or in establishing the extent of Work to be performed by any trade.
- d. ESS Confirmation On-Site. Provider will at all times maintain at least one complete, up-to-date set of the ESS Confirmation, Drawings and Specifications, and addenda specified therein, showing approval by the State Fire Marshal (including the original documents as well as all Change Orders and other supplemental and additional documents) on the Site, to be available to County and the Project Manager.

2. Drawings and Specifications.

a. Intent of Drawings and Specifications.

- i. To the extent necessitated by the Work, Provider shall provide applicable Drawings and Specifications, all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other necessary for the performance of the Work.
- ii. Provider shall perform reasonably implied parts of Work as “incidental Work” although absent from Drawings and Specifications. Incidental Work includes any Work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental Work includes any Work necessary or required to make the applicable ESS satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of the ESS Confirmation. Provider shall perform incidental Work without extra cost to County. Incidental Work shall be treated as if fully described in Specifications and shown on Drawings.

b. Interpretation Of Drawings And Specifications.

- i. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from Drawings, Provider shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by County. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.
- ii. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Provider have any questions or requests relating to Drawings or Specifications, Provider shall refer the matter to County, in writing, with a copy to the Project Manager. County will promptly issue written responses, clarifications or interpretations as County may determine necessary, which shall be consistent with the intent of and be reasonably inferable from the ESS Confirmation. If Provider believes that a written response, clarification or interpretation justifies an adjustment in the Service Charge listed in the Energy Service System Confirmation or Construction Schedule, Provider shall give County prompt written notice and Section 6.2 of the General Conditions shall apply.
- iii. The following general Specifications shall apply wherever in the Specifications, or in any directions given by County in accordance with or supplementing Specifications, it is provided that Provider shall furnish
- iv. materials or manufactured articles or shall do Work for which no detailed Specifications are shown. Materials or manufactured articles shall be of high grade, in quality and workmanship, obtainable in the market from firms of established good

reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. The Work shall conform to the usual standards or codes, such as those cited herein, for first class Work of the kind required.

- c. Use Of Drawings And Specifications. The ESS Confirmation and, if applicable, related Drawings, Specifications and other documents were prepared for use for Work thereunder only. No part thereof shall be used for any other construction or for any other purpose except with the written consent of County and Provider. Any unauthorized use thereof is prohibited and at the sole liability of the user.

### 3. Provider's Obligations.

- a. Provider's Superintendent. Provider shall employ a competent, qualified Superintendent who shall provide full time, on-Site supervision of all aspects of the Work during performance of the Work. Provider, as soon as practicable after execution of the Energy Service System Confirmation, shall furnish, in writing, to County and to Project Manager, the name and qualifications of a proposed Superintendent. The Project Manager may reply within fourteen (14) days to the Provider in writing to state (1) whether County has reasonable objection to the proposed Superintendent or (2) that any of them require additional time to review. Failure of the Project Manager to reply within the fourteen (14) day period shall constitute notice of no objection. The Superintendent shall be satisfactory to County and shall not be changed except with the consent of County. County may request at any time for reasonable cause to be provided in writing to Provider that a Provider remove its Superintendent from the Project and provide an alternate Superintendent as approved by County. The Superintendent shall represent Provider and all communications given to the Superintendent shall be as binding as if given to Provider. Material communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.
- b. Provider's responsibility for agents and employees.
  - i. Provider shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do the Work. If County notifies Provider that any of its employees, or any of its Subcontractors' employees is incompetent, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the ESS Confirmation, or uses threatening or abusive language to any person during performance of the Work or violates sanitary rules, or is otherwise unsatisfactory, and if County requests that such Person be discharged from the Work, then Provider or its Subcontractor, as applicable, shall immediately discharge such Person from the Work and the discharged Person shall not be re-employed on the Site except with consent of County. Provider shall be responsible to County for the acts and omissions of its employees and Subcontractors, their agents, and employees, and all other Persons performing any of the Work pursuant to a written contract with Provider. County shall be responsible to Provider for the acts and omissions of its employees and the Project Manager, their agents, and employees, and all other Persons performing on behalf of County under the ESS Confirmation pursuant to a written contract.

- ii. Except as otherwise provided in the ESS Confirmation or as otherwise designated in writing by County, County will issue all communications to Provider through the Project Manager or as otherwise designated by the County in writing to Provider reasonably in advance, and Provider shall issue all communications to County through the Project Manager or as otherwise notified in writing to Provider reasonably in advance.
- c. Communications and information distribution. All emails shall be copied to the Project Manager or any other person designated by County in writing and the Superintendent. Communications between County and Provider shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to the ESS Confirmation.

4. General Provisions Regarding Conduct of Work

- a. No Work without certain documents. Provider shall do no Work without current plans and Specifications, if applicable to the ESS.
- b. Supervision and construction procedures. Provider shall supervise and direct the Work, using his/her/its best skill and attention.
- c. Provider's responsibility for labor, materials, and equipment. Unless otherwise specifically noted, Provider shall provide and pay for all labor, materials, equipment, and machinery and pay for water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
- d. Conduct and skill of employees. Provider shall at all times enforce strict discipline and good order among Provider's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him/her.
- e. Provider's Construction Schedule. Provider, immediately after execution of the Energy Service System Confirmation, shall prepare and submit for County's information and approval, an estimated construction and installation schedule for the Work (the "**Construction Schedule**"). The Construction Schedule shall be related to the entire ESS to the extent required by such ESS Confirmation. The Construction Schedule shall indicate the dates for the starting and completion of the various stages of construction and installation and shall be revised weekly. Provider shall cooperate with the Project Manager or County directly in scheduling and performing the Work.
- f. Dimensions to be checked. All dimensions shall be carefully checked by the various artisans, as applicable. Provider shall adhere to the dimensions shown on Specifications and Drawings, insofar as commercially reasonable. Wherever possible, dimensions shall be taken at the building, but no Work shall be delayed or held up waiting for building dimensions, when by the exercise of foresight and proper cooperation, the dimensions may be established in advance of construction or installation.
- g. Cutting and patching. Provider shall be responsible for any cutting, fitting, and patching that may be required to complete the Work, except as otherwise specifically provided in the ESS Confirmation.
- h. Damage to Work and property on-Site. All damage or loss to any property on or near the Site caused in whole or in part by Provider, any Subcontractor, or anyone directly or indirectly

employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by Provider, at Provider's expense, except damage or loss attributable to faulty Specifications or working details, or to the acts or omissions of County, Project Manager or anyone employed by either of them, or for whose acts either of them may be liable, and not attributable to the negligence of Provider.

5. Shop Drawings and Samples.

- a. Submittal of Shop Drawings and Samples. To the extent applicable to the ESS, Provider shall submit to Project Manager with reasonable promptness and in orderly sequence so as to cause no delay in the Work, all Shop Drawings and Samples required by the ESS Confirmation. Such Shop Drawings and Samples shall be properly identified. At the time of submission, Provider shall inform the Project Manager in writing, of any deviation in the Shop Drawings or Samples from any requirements of the ESS Confirmation.
- b. Warranties concerning Shop Drawings and Samples. By approving and submitting Shop Drawings and Samples, if applicable, Provider thereby represents that Provider has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that Provider has checked and coordinated each such Shop Drawing and Sample with the requirements of the Work in the ESS Confirmation.
- c. Review and approval. The Project Manager or County will review Shop Drawings and Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the ESS and with information given in the related ESS Confirmation. County's approval of a separate item shall not indicate approval of an assembly in which the item functions.
- d. Corrections. If applicable, Provider shall make any agreed corrections and shall resubmit the applicable number of corrected copies of Shop Drawings or new Samples until approved.
- e. Provider's responsibility. County's approval of Shop Drawings or Samples, if applicable, shall not relieve Provider of responsibility for any deviation at the time of submission.
- f. Completion of Work in accordance with Shop Drawings and Samples. No portion of the Work requiring a Shop Drawing or Sample submission under the ESS Confirmation shall be commenced until County has approved the submission, such approval not to be unreasonably withheld. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

6. Tests

- a. Provider's responsibility for required tests. If the ESS Confirmation or Applicable Law requires any Work to be inspected, tested, or approved, Provider shall give Project Manager timely notice of its readiness and, to the extent reasonably possible, of the date arranged so Project Manager may observe such inspection, testing, or approval. County shall bear all costs of such inspections, tests, and approvals.
- b. Certificates of inspection. Certificates of inspection, testing, or approval as required by Applicable Law shall be secured by Provider and a copy promptly delivered by Provider to Project Manager for transmittal to the County.
- c. No waiver of Provider's responsibility. Neither the observations of Project Manager in administration of the construction under the ESS Confirmation, nor inspections, tests, or

approvals by Persons other than Provider shall relieve Provider from Provider's obligations to perform the Work in accordance with the ESS Confirmation.

7. Provider's Prosecution and Progress of the Work. Subject to County rights specifically reserved in the ESS Confirmation, Provider shall supervise, direct, have control over, and be responsible for Provider's means, methods, techniques, sequences, and procedures, for coordinating all portions of the Work, safety precautions and programs incident thereto, and compliance with Applicable Law.
8. Use of Site.
  - a. Limit of operations. Provider shall not unreasonably occupy the Premises with his/her/its materials. Insofar as commercially reasonable, Provider shall arrange his/her/its Work and its progress to prevent any interference with the operations of the existing County facilities. Provider will use commercially reasonable efforts to minimize the impact on County when the Work requires service interruption and will schedule the same with reasonable notice absent an emergency.
  - b. Cleaning up during and after Work. Provider, at the end of each Business Day, shall ensure that the Premises are free from accumulation of waste materials or rubbish caused by his/her/its performance of the Work. At the completion of the Work, Provider shall remove all of Provider's waste materials and rubbish from and about the Site as well as all Provider's tools, construction equipment, machinery, and surplus materials. If Provider fails to clean up after completion of the Work, County may do so and the cost thereof shall be charged to Provider.
9. Uncovering and correction of Work
  - a. Uncovering of Work. County may ask to see any Work that has been covered prior to its inspection, and Provider shall uncover such Work. If such Work is found to be in accordance with the applicable ESS Confirmation, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to County. If such Work performed by Provider or Provider's Subcontractor is found not to be in accordance therewith, Provider shall pay such costs.
  - b. Correction of Work.
    - i. Subject to the other terms and conditions of the ESS Confirmation and the General Conditions, Provider shall promptly correct Defective Work to the extent discovered prior to the Installation Date and to the extent not caused by County, its employees, agents, or contractors.
    - ii. Provider shall bear all cost of correcting such Defective Work, including the cost of Project Manager's additional services made necessary thereby.
    - iii. Such Defective Work shall be removed from the Site if necessary, and the Work shall be corrected to comply with the ESS Confirmation without cost to County.
    - iv. If Provider does not remove such Defective Work within a reasonable time mutually agreed upon by the Parties and fixed by written notice from Project Manager, County may remove it and may store the materials or equipment at a reasonable expense to be paid by Provider. If Provider does not pay the cost of such removal and storage within ten (10) days thereafter, County may upon thirty (30) additional days written notice sell such Work at auction or a private sale and shall account for the net

proceeds thereof, after deducting all the costs that should have been borne by Provider, including compensation for additional architectural services, if any. If such proceeds of sale do not cover all such costs, the difference shall be charged to Provider and an appropriate Change Order shall be issued. Such Change Order shall not require Provider's consent to be effective. Said amount may be deducted from any payment thereafter due to Provider under the ESS Confirmation. If the payments then or thereafter due Provider are not sufficient to cover such amount, Provider shall pay the difference to County.

- c. Acceptance of defective or nonconforming Work. If County prefers to accept defective or nonconforming Work with respect to a County ESS, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Service Charge.
- d. Emergency corrective action by County. If, in the reasonable opinion of County, Defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to County or third parties or to prevent interruption of operations of County or third parties, County will attempt to give prompt notice to Provider. If Provider cannot be contacted promptly or does not comply with County's request for correction within a reasonable time, County may proceed to make such correction or provide such attention, and the costs of such correction or attention shall be charged against Provider.

#### 10. Protection of Persons and Property

- a. Provider To Locate Underground Facilities.
  - i. During construction, Provider shall comply with Government Code Sections 4216 through 4216.9, and in particular Section 4216.2 which provides, in part: "Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two (2) working days, but no more than fourteen (14) calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."
  - ii. To the extent applicable, Provider shall contact Underground Service Alert ("**USA**") and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. To the extent Provider will excavate or trench as part of the Work, Provider is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching Work, if any, Provider shall provide County with copies of all USA records secured by Provider. Provider shall advise County of any conflict between information provided in the geotechnical data and written description of existing conditions as provided by the County, if any, the Drawings and that provided by USA records. Provider's excavation shall be subject to and comply with the ESS Confirmation.
  - iii. To the extent Provider will excavate or trench as part of the Work, Provider shall also investigate the existence of existing service laterals, appurtenances or other types of

utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the applicable Site (but on the Premises).

b. Public Work Excavation or Digging.

- i. Pursuant to California Labor Code § 6705, to the extent any of the Work is Public Works involving an estimated expenditure in excess of Twenty-Five Thousand Dollars (\$25,000) and includes the excavation of any trench or trenches five (5) feet or more in depth, Provider will, in advance of excavation, submit to County and/or a registered civil or structural engineer, employed by County, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted and approved by County or by the person to whom authority to accept has been delegated by County. Pursuant to California Labor Code § 6705, nothing in this Section 10(b) of the Construction Phase Conditions imposes tort liability on County or any of its employees.
- ii. Pursuant to California Public Contract Code § 7104, to the extent any of the Work included in the scope of Services under any Energy Service System Confirmation is Public Works involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Provider will promptly, and before the following conditions are disturbed after Provider's discovery thereof, notify County, in writing, of any:
  - a. Material that Provider believes may be material that is a hazardous waste, as defined in California Health and Safety Code § 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Law;
  - b. Subsurface or latent physical conditions at the applicable Premises differing from those indicated by information about such Premises made available to Provider by County prior to commencing the Work;
  - c. Unknown physical conditions at such Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the ESS Confirmation.
- iii. County will promptly investigate such conditions and, if it finds that the conditions are materially as notified by Provider, Provider determines that it can continue the Work without changing the scope of Work to remedy any of the conditions or County remedies such conditions and such conditions cause a decrease or increase in Provider's cost of, or the time required for, performance of any part of such Work, County will, subject to Section 6.2 of the General Conditions, issue a Change Order in accordance with any additional procedures described in the ESS Confirmation. If the conditions cannot be remedied or County will not remedy them and in Provider's reasonable judgment it cannot continue the Work due to such conditions, Provider shall, subject to Section 6.2.2, have the right to terminate the ESS Confirmation without further liability to either Party except with respect to payment of amounts and liabilities arising prior to termination.

- c. Provider To Protect Underground Facilities.
- i. To the extent the Work impacts the Underground Facilities, Provider shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work if contemplated under the applicable ESS Confirmation.
  - ii. Prior to performing Work at the Site, and to the extent the Work is reasonably expected to materially impact the Underground Facilities, Provider shall lay out the locations of Underground Facilities known to it that are to remain in service and other significant known underground installations previously described by County in writing to Provider. Provider shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Provider shall promptly report to County for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Provider's attention, including reasonable action taken to protect or repair damage, shall be determined in Provider's reasonable discretion. Such additional compensation and additional time shall, by appropriate Change Order, be charged to County and included in the ESS Confirmation, respectively.
  - iii. Consistent with California Government Code Section 4215, County will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the applicable Site only if such utilities are not identified in the applicable ESS Confirmation.
  - iv. Provider's compensation for claimed latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed latent or materially different Site conditions, unless otherwise specified in the ESS Confirmation (including the General Conditions). Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Provider's or its Subcontractor's contracted value of services rendered amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult Site conditions in the Work area based on the available records and locale of the Work. For example, if Provider excavates in an area unexpected, then such costs would be recoverable entirely; while if Provider extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that Work area exceeded the reasonable expectations therefore.
- d. Trench safety. For all trenches to be made in connection with the Work, Provider shall submit a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. If such plan varies from the shoring system standards, a registered civil or structural engineer shall prepare the plan. The plan shall be reviewed and must receive approval as adequate to protect worker safety, by County or by a registered civil or structural engineer employed by County, in advance of excavation. The shoring, sloping, or protective system must be at least as effective as that required by the Construction Safety Orders and in accordance with California Labor Code Section 6705.

- e. Unsafe loading. Provider shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Provider subject any part of Work or adjacent property to stresses or pressures that will endanger it. Provider shall conduct all necessary existing conditions investigations regarding structural, mechanical, electrical or any other existing systems as relates to loading, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures as relates to loading to accommodate performing the Work.
- f. Emergencies. In any emergency affecting the safety of persons or property, Provider shall act, at his/her/its discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Provider on account of emergency Work shall be determined as provided in Section 6.2 of the General Conditions.
- g. Accidents. Provider shall promptly report, in writing, to Project Manager all accidents whatsoever arising out of, or in connection with the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage. In addition, if death or serious injuries or serious damages are caused, Provider shall report the accident immediately to Project Manager by telephone or messenger. Provider shall thereafter promptly report the facts, in writing, to Project Manager giving full details of the accident.
- h. General Representations and Warranties. Provider represents and warrants that it is and will be at all times fully qualified and capable of performing every phase of the Work and to complete the Work in accordance with the terms of the Energy Service System Confirmation. Provider warrants that all Work shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of such Energy Service System Confirmation. Provider shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by such Energy Service System Confirmation.

**Schedule 3 – General Conditions**  
**County Forms**  
**(Attached)**

CONTRACTOR'S CERTIFICATE AS TO WORKERS' COMPENSATION

(Labor Code Section 1861) Division 004100

Labor Code Section 3700 provides, in relevant part:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

I certify that 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 that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

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

Business Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2204)

DIVISION 004200

Pursuant to Public Contract Code (PCC) Section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of \$1,000,000 or more.

**You must complete one of the following two paragraphs with your bid submittal.** To complete paragraph 1, check the corresponding box and complete the certification for paragraph 1. To complete paragraph 2, check the corresponding box and attach a copy of the written permission from the County with your bid.

1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, certify under penalty of perjury, that I am duly authorized to legally bind the undersigned to the clause in paragraph 1. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State</i> <i>of _____</i>	

OR

2. We have received written permission from the County to submit a bid or proposal pursuant to PCC 2203(c) or (d). A copy of the written permission from the County is attached hereto.

CONTRACTOR'S CERTIFICATION OF GOOD-FAITH EFFORT TO EMPLOY MONTEREY BAY AREA RESIDENTS

(Monterey County Code Section 5.08.120) Division 004300

I CERTIFY THAT I am aware of the provision of Monterey County Code Section 5.08.120.

Monterey County Code Section 5.08.120 provides, in relevant part:

- A. General Provisions. All County contracts for public works of improvement shall contain provisions pursuant to which the contractor shall make a good-faith effort to employ qualified individuals who are, and have been for at least one (1) year out of the past three (3) years prior to the opening of bids, residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the contractor's total construction work force, on that particular contract, including any subcontractor work force (with exception of specialty subcontractor items identified in bid items) measured in labor work hours, is comprised of Monterey Bay Area residents.
- B. Non-responsive Bidder Declaration: Enforcement. If any contractor submitting a bid for a contract for public works of improvement fails to abide by the good-faith local employment provisions of this Section, Contractor may be declared by the Board to be a non-responsive bidder for purposes of this Chapter. If a contractor lists in his or her bid a subcontractor who is currently disqualified under the terms of this Section, the Board may declare said contractor to be a non-responsive bidder for purposes of this Chapter. If the Board finds that a contractor to whom a contract for public works of improvement has been awarded has failed to comply with the good-faith employment provisions of this Section during the performance of the contract, the Board may disqualify Contractor from bidding on any County contract for public works of improvement for a period of one (1) year from the date of the Board's disqualification. A subsequent violation of this Section by a contractor may result in disqualification by the Board for a period of three (3) years from the date of the subsequent disqualification.
- C. Binding on Subcontractors. Every contractor entering into a contract for public works of improvement subject to the provisions of this Section shall include in each and every subcontract for work, laborers, or material supplier relating to the project the requirement that the subcontractor shall make a good-faith effort to employ qualified individuals who are, and have been for at least one (1) year out of the past three (3) years prior to the opening of bids, residents of the Monterey Bay Area. If the Board finds that any subcontractor has failed during the performance of the subcontract to comply with this Section, the Board may disqualify said subcontractor from submitting or being listed in any bid for any County contract for public works of improvement for a period of one (1) year from the date of the Board's disqualification. A subsequent violation by a subcontractor may result in disqualification by the Board for a period of three (3) years from the date of the subsequent disqualification."

I FURTHER CERTIFY AS FOLLOWS (check the box that applies):

I CERTIFY that at least fifty percent (50%) of the total construction work force on the project, including any subcontractor work force, measured in labor work hours, will be comprised of qualified individuals who to the best of my knowledge are, and have been for at least one (1) year out of the pastthree (3) years prior to the effective date of the opening of bids, residents of the Monterey Bay Area. Evidence that I will comply with this requirement is as follows (please use additional pages to provide supporting evidence and/or documentation, as necessary):

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I CERTIFY that I shall make a good-faith effort to employ qualified individuals who, to the bestof my knowledge, are, and have been for at least one (1) year out of the past three (3) years prior to the effective date of the opening of bids, residents of the Monterey Bay Area in sufficient numbers such that no less than fifty percent (50%) of the total construction work force on the project, including any subcontractor work force (with the exception of specialty subcontractor items identified in the bid items) measured in labor work hours, will be comprised of Monterey Bay Area residents. **Attached is my written plan to recruit Monterey Bay Area residents as part of the construction work force.**

I CERTIFY that I do not comply with and am unable to make a good-faith effort to comply withthe good-faith local employment provisions set forth in Monterey County Code Section 5.08.120. Explanation to why I am not able to comply is as follows (please use additional pages to provide supporting evidence and/or documentation, as necessary):

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I declare under penalty of perjury under the laws of the State of California that the foregoingcertification is true and correct. Executed on (date) \_\_\_\_\_

at (city/state)\_\_\_\_\_.

Business Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

GUARANTY

Division 006536

TO: The COUNTY OF MONTEREY ("Owner"), for construction of [INSERT DESCRIPTION OF ENERGY SERVICE SYSTEM, ("Project")].

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to Owner for a period of one (1) year following the date of Final Completion of the Work completed, or such longer period specified in Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work. Final Completion shall be the date the Monterey County Board of Supervisors accepts all Work as complete.

Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one (1) year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within one (1) year after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall respond within 24 hours after being notified in writing by Owner of any Work not in accordance with the requirements of the Contract or any defects in the Work. Contractor shall commence and prosecute with due diligence all Work necessary to fulfill the terms of this Guaranty, and to complete the Work within a reasonable period of time. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the Work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all Claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor's name

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip code

& By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**EXHIBIT C-1 TO MASTER ENERGY SERVICES AGREEMENT**  
**FORM OF ESS CONFIRMATION (SOLAR PV AND ENERGY STORAGE)**  
(Attached)

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (“**Agreement**”) is entered into June 13, 2023 (“**Effective Date**”) by and between Monterey Solar 1 LLC (“**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 June 13, 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 (viii) 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.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of the 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 forty-eight (48) 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 forty-eight (48) 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. 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).
- g. **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 (7<sup>th</sup>) Contract Year, the first day of the ninth (9<sup>th</sup>) Contract Year, the first day of the eleventh (11<sup>th</sup>) Contract Year, the first day of the sixteenth (16<sup>th</sup>) Contract Year, or the first day of the twentieth (20<sup>th</sup>) 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: \_\_\_\_\_

**MONTEREY SOLAR 1 LLC**

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

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

**Exhibit 1****Basic Terms and Conditions**

1. **Initial Term:** Twenty-five (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:**

<b>Contract Year</b>	<b>Output (\$/kWh)</b>
1	\$0.18500
2	\$0.18870
3	\$0.19247
4	\$0.19632
5	\$0.20025
6	\$0.20425
7	\$0.20834
8	\$0.21251
9	\$0.21676
10	\$0.22109
11	\$0.22109
12	\$0.22109
13	\$0.22109
14	\$0.22109
15	\$0.22109
16	\$0.22109
17	\$0.22109
18	\$0.22109
19	\$0.22109
20	\$0.22109
21	\$0.22109
22	\$0.22109
23	\$0.22109
24	\$0.22109
25	\$0.22109

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	\$7,964,440.79
2	\$7,019,807.47
3	\$6,254,433.49
4	\$5,543,711.21
5	\$4,846,807.15
6	\$4,146,104.76
7	\$4,008,097.93
8	\$3,921,258.50
9	\$3,823,511.57
10	\$3,714,122.03
11	\$3,592,309.57
12	\$3,476,975.15
13	\$3,357,864.06
14	\$3,230,325.17
15	\$3,098,296.92
16	\$2,961,520.48
17	\$2,819,722.05
18	\$2,672,611.93
19	\$2,519,883.57
20	\$2,361,212.60
21	\$2,196,255.78
22	\$2,024,649.82
23	\$1,846,010.26
24	\$1,659,930.15
25	\$1,465,978.77

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	1,705,725	1,535,153

2	1,693,785	1,524,406
3	1,681,928	1,513,736
4	1,670,155	1,503,139
5	1,658,464	1,492,617
6	1,646,855	1,482,169
7	1,635,327	1,471,794
8	1,623,879	1,461,491
9	1,612,512	1,451,261
10	1,601,225	1,441,102
11	1,590,016	1,431,014
12	1,578,886	1,420,997
13	1,567,834	1,411,050
14	1,556,859	1,401,173
15	1,545,961	1,391,365
16	1,535,139	1,381,625
17	1,524,393	1,371,954
18	1,513,722	1,362,350
19	1,503,126	1,352,814
20	1,492,604	1,343,344
21	1,482,156	1,333,941
22	1,471,781	1,324,603
23	1,461,479	1,315,331
24	1,451,248	1,306,123
25	1,441,090	1,296,981

\* 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:** 1441 Schilling Place Salinas, CA 93901
2. **System Size (DC kW):** 1,083 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

**PV System:**

Modules: Boviet BVM6612M9(S)-HC or Tier 1 Equivalent  
Inverters: SolarEdge SE66.6KUS / SE100KUS 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):** 609 kW/2436 kWh\*

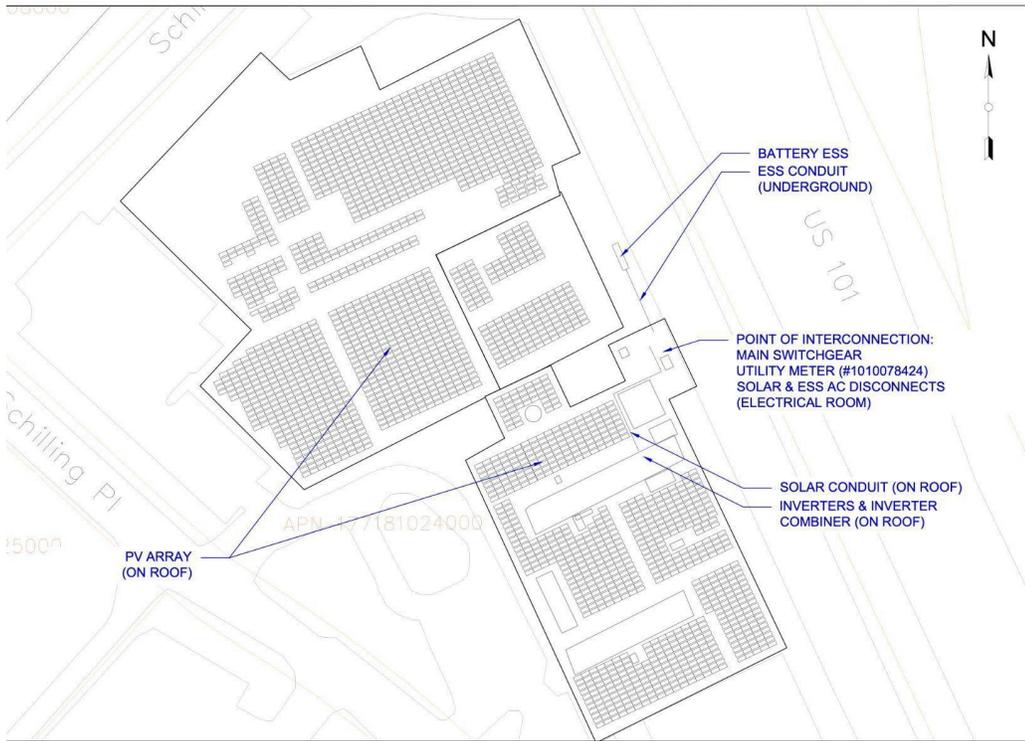
\* These are estimates (and not a guarantee) of the system size

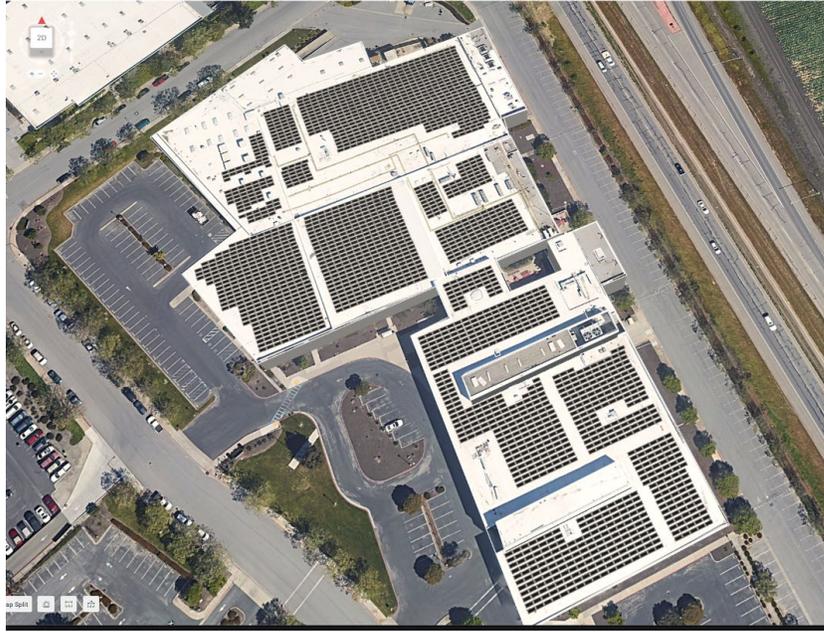
6. **Delivery Point and Premises:** Schedule A to this Exhibit 2 contains one or more drawings or images depicting:
  - a. Premises, including the Improvements (as applicable);
  - b. Proposed System location;
  - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
  - 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**

1441 Schilling Place Salinas, CA 93901

**Site and Facility Descriptions**





**Exhibit 3**  
**Copy of Roof Warranty**

# Warranties



## LETTER OF WARRANTY

Date: June 27, 2016

Project:

Job Order #: JF02-14-05-J8862-00

Job Order Title: Schilling Place Tenant Improvement – ReRoof

Contractor:

Sea Pac Engineering, Inc.  
3325 Wilshire Blvd. Suite 305  
Los Angeles, CA 90010-1719

Owner:

Monterey County  
Facilities  
168 W Alisal, 2nd Floor  
Salinas, CA 93901

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Sea Pac Engineering, Inc., warrants all its work performed in connection with the above project to be in conformance with drawings and specifications and free from all defects in all facility components and systems for a period of **twelve month(s)** from this date June 10, 2016 of Final Acceptance and agrees to remedy all defects arising within that period at its own expense including the cost of repair or replacement of items damaged by such defects or damaged in the course of repairing such defects.

It is understood and agreed that in the event of defects and the necessity of making repairs, the Owner will immediately notify the above Contractor in writing of its conditions and shall give the Contractor reasonable time in which to make said repairs. If any person, firm, or corporation other than the above listed Contractor has, since the completion of the above work, performed or attempted to perform any repairs to the property then this warranty could become null and void. This warranty does not cover any repairs made by anyone other than the above Contractor or one of its authorized representatives.

The terms "defects" shall not be construed as embracing damage arising from misuse, negligence, Acts of God, normal wear and tear or failure to follow maintenance or operating instructions.

JOHN LEE will be the authorized representative of Sea Pac Engineering Inc., and will be the designated Warranty Manager for the duration of the warranty period.

A handwritten signature in blue ink, appearing to read 'John Lee', is written over a horizontal line.

John Lee / President  
Sea Pac Engineering, Inc.

**GUARANTEE CERTIFICATE**

**C.W ROOFING & Waterproofing, Inc.**  
27702 Crown Valley Pkwy Site D-4 #154,  
LOS ANGELES, CA 90006  
  
LICENSE 974117

We the undersigned, we hereby guarantee to the purchaser name in the contract of which this guarantee is a part that the roofing work completed by us on the building described in said contract on the date set forth therein is of the materials and workmanship described in the specifications agreed to and a part of such contract. We hereby guarantee to the purchaser to make, without cost or expense to the purchaser, any repairs to the roof of said building involved in such roof work that may become necessary to maintain it in a water tight condition for a period of 1 years from the date of completion for this guarantee to be effective, it shall be the duty of the purchaser, or agent, tenant or employee of such purchase, to report to us in writing within caused from defective materials or workmanship applied by us under our contract. In the event defects occur during such 1 years period due to defects in workmanship or materials applied by us, our guarantee and obligation shall be limited to necessary repair, and it is understood and agreed that we shall not be responsible to anyone for, and purchaser shall hold us harmless from and against any liability to anyone for, damaged to such building itself.

It is understood that this guarantee does not extend to: any damage to said roof from fire earthquake, extreme wind, hail, or distortions, warping, settlement of defects in the roof deck upon which the roof is applied or rests; or injury caused to said roof by other parties by their actions beyond our control; or to leaks from flashing or parapet walls unless applied or waterproofed by us. We are not responsible for leaks through skylight, air conditioning units, vent or other sheet metal installation unless applied by us. New roof requires maintenance, if the maintenance is not up to date after 3 years of the completion of the roof, the guarantee does not exist. This guarantee agreement from has been approved and adopted as standard by members of the roofing contractor Assoc. of California.

This guarantee is issued to Monterey County Completed by us on 6-10-2016  
And refers on to Fleceback TPO Address 1447 Schilling PL

City Salinas State California Zip 93905

Contractor: Daniel Suh 

**VERSICO TOTAL ROOFING SYSTEM WARRANTY**

VSW-1

Rev 01/15

**Versico, a division of Carlisle Construction Materials Incorporated (Versico)**, warrants to the Building Owner (**Owner**) of the building described below, that subject to the terms, conditions, and limitations stated in this warranty, Versico will repair any leak in the Versico Total Roofing System (**Versico Total Roofing System**) installed by a Versico Authorized Roofing Contractor for a period of **25** years commencing with the date of Versico's acceptance of the Versico Total Roofing System installation. However, in no event shall Versico's obligations extend beyond **25.5** years subsequent to the date of substantial completion of the Versico Total Roofing System. See below for exact date of warranty expiration.

The Versico Total Roofing System is defined as the following Versico brand Materials: Membrane, Flashings, Adhesives and Sealants, Insulation, Cover Boards, Fasteners, Fastener Plates, Fastening Bars, Metal Work, Insulation Adhesives, and any other Versico brand products utilized in this installation.

**TERMS, CONDITIONS, LIMITATIONS**

1. Owner shall provide Versico with written notice via letter, fax or email within thirty (30) days of the discovery of any leak in the Versico Total Roofing System. Owner should send written notice of a leak to Versico's Warranty Services Department at the address set forth at the bottom of this warranty. By so notifying Versico, the Owner authorizes Versico or its designee to investigate the cause of the leak. Should the investigation reveal the cause of the leak to be outside the scope of this Warranty, investigation and repair costs for this service shall be paid by the Owner.

2. If, upon inspection, Versico determines that the leak is caused by defects in the Versico Total Roofing System's materials, or workmanship of the Versico Authorized Roofing Contractor in installing the same, Owner's remedies and Versico's liability shall be limited to Versico's repair of the leak.

3. This Warranty shall not be applicable if, upon Versico's inspection, Versico determines that any of the following has occurred:

(a) The Versico Total Roofing System is damaged by natural disasters, including, but not limited to, lightning, fire, insect infestations, earthquake, tornado, hail, hurricanes, and winds of (3 second) peak gust speeds of fifty-five mph or higher measured at 10 meters above ground, or

(b) Loss of integrity of the building envelope and, or structure including, but not limited to partial or complete loss of roof decking, wall siding, windows, doors or other envelope components or from roof damage by wind-blown objects, or:

(c) The Versico Total Roofing System is damaged by any intentional or negligent acts, accidents, misuse, abuse, vandalism, civil disobedience, or the like.

(d) Deterioration or failure of building components, including, but not limited to, the roof substrate, walls, mortar, HVAC units, non-Versico brand metal work, etc., occurs and causes a leak, or otherwise damages the Versico Total Roofing System; or

(e) Acids, oils, harmful chemicals and the like come in contact with the Versico Total Roofing System and cause a leak, or otherwise damage the Versico Total Roofing System.

(f) The Versico Total Roofing System encounters leaks or is otherwise damaged by condensation resulting from any condition within the building that may generate moisture.

4. This Warranty shall be null and void if any of the following shall occur:

(a) If, after installation of the Versico Total Roofing System by a Versico Authorized Roofing Contractor, there are any alterations or repairs made on or through the roof or objects such as, but not limited to, structures, fixtures, solar panels, wind turbines, roof gardens or utilities are placed upon or attached to the roof without first obtaining written authorization from Versico; or

(b) Failure by the Owner to use reasonable care in maintaining the roof, said maintenance to include, but not be limited to, those items listed on Versico's Care & Maintenance Information sheet which accompanies this Warranty.

5. Only Versico brand insulation products are covered by this warranty. Versico specifically disclaims liability, under any theory of law, for damages sustained by or caused by non-Versico brand insulation products.

6. During the term of this Warranty, Versico shall have free access to the roof during regular business hours.

7. Versico shall have no obligation under this Warranty while any bills for installation, supplies, services, and warranty charges have not been paid in full to the Versico Authorized Roofing Contractor, Versico, or material suppliers.

8. Versico's failure at any time to enforce any of the terms or conditions stated herein shall not be construed to be a waiver of such provision.

9. Versico shall not be responsible for the cleanliness or discoloration of the Versico Total Roofing System caused by environmental conditions including, but not limited to, dirt, pollutants, or biological agents.

10. Versico shall have no liability under any theory of law for any claims, repairs, restoration, or other damages including, but not limited to, consequential or incidental damages relating, directly or indirectly, to the presence of any irritants, contaminants, vapors, fumes, molds, fungi, bacteria, spores, mycotoxins, or the like in the building or in the air, land, or water serving the building.

11. This warranty shall be transferable upon a change in ownership of the building when the owner has completed certain procedures including a transfer fee and an inspection of the Roofing System by a Versico representative.

**VERSICO DOES NOT WARRANT PRODUCTS UTILIZED IN THIS INSTALLATION WHICH IT HAS NOT FURNISHED; AND SPECIFICALLY DISCLAIMS LIABILITY, UNDER ANY THEORY OF LAW, ARISING OUT OF THE INSTALLATION AND PERFORMANCE OF, OR DAMAGES SUSTAINED BY OR CAUSED BY, PRODUCTS NOT FURNISHED BY VERSICO OR THE PRIOR EXISTING ROOFING MATERIAL OVER WHICH THE VERSICO ROOFING SYSTEM HAS BEEN INSTALLED**

**THE REMEDIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES FOR FAILURE OF THE VERSICO TOTAL ROOFING SYSTEM OR ITS COMPONENTS. THERE ARE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHICH EXTEND BEYOND THE FACE HEREOF. VERSICO SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGE TO THE BUILDING OR ITS CONTENTS UNDER ANY THEORY OF LAW.**

**OWNER: MONTEREY COUNTY FACILITIES**  
**BUILDING : SCHILLING PLACE TENANT IMPROVEMENT RE-ROOF**  
**1441 SCHILLING PLACE, SALINAS, CA**

**ROOFER: CW ROOFING & WATERPROOFING, INC.**  
**SUITE D-4 27702 CROWN VALLEY P, LADERA RANCH, CA 92694**

**DATE INSTALLATION COMPLETED : 06/08/2016**  
**DATE OF ACCEPTANCE BY VERSICO : 07/26/2016**  
**WARRANTY EXPIRATION DATE : 07/25/2041**

<b>WARRANTY NUMBER:</b>	<b>1185986</b>
-------------------------	----------------

VERSICO, a division of Carlisle Construction Materials Incorporated

BY \_\_\_\_\_

*[Signature]*



P.O. Box 1289 Carlisle, PA 17013  
 (800) 992-7663 (717) 960-4035 FAX



# ROOFING SYSTEM WARRANTY

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**System Warranty Revisions & Alterations Procedure  
Care & Maintenance Instructions**

**Versico**  
PO Box 1289  
Carlisle, PA 17013  
Tel: **800.992.7663**  
Fax: 717.960.4036  
Web: **[www.versico.com](http://www.versico.com)**

## VERSICO ROOFING SYSTEMS

### Warranty Revisions & Alterations Procedures

Versico recommends periodic roof system evaluations to ensure the roofing system is performing as intended. We suggest regular maintenance inspections be conducted by a Versico Authorized Roofing Contractor or by someone specially trained in single-ply roofing installations. However, even with the most rigorous reviews, roofing systems can be damaged by flying debris, other trades servicing rooftop equipment, etc. Regardless of how the damage occurs, it is important to understand how to both protect your warranty investment and prolong the life of your roofing system. Following these procedures and recommendations can ensure that repairs are performed accurately so that the warranty duration and coverage remains intact.

### Warranty Revisions & Alterations Procedures

1. Paragraph 4(a) of the Versico Roofing System Warranty states: "This warranty shall be null and void if, after installation of the Versico Roofing System by a Versico Authorized Roofing Contractor, there are any alterations or repairs made on or through the roof or objects such as, but not limited to, structures, fixtures, or utilities placed upon or attached to the roof without first obtaining written authorization from Versico."
2. Any questions concerning revisions or alterations to your Versico Roofing System must be directed to Versico's Warranty Services Department. Versico must approve the proposed details prior to any revision or alteration.

Below is address information for Versico's Warranty Services and telephone and fax numbers for your convenience.

**Versico**

Attn. Warranty Services

P.O. Box 1289, Carlisle, PA 17013

**Phone: 800.992.7663 Fax: 717.960.4035**

3. The approval process begins when Versico receives a shop drawing that outlines those locations where the alteration will take place. Either the Versico Authorized Roofing Contractor or the building owner must also notify Versico of the proposed alterations in writing and identify the project name, location, warranty number and the CMD or AB number originally assigned by Versico.
4. A Versico Authorized Roofing Contractor must perform all revision work. It is recommended that the original contractor who installed the roofing system perform the revision work, if possible.
5. The Versico Authorized Roofing Contractor must notify Versico in writing when the revision work is complete.
6. At Versico's discretion, a Versico Field Service Representative may conduct an inspection to ensure compliance with the current published Versico Specifications and Details. The contractor will be notified of the results. Current inspection charges and expenses will apply.
7. When the revision or alteration is completed in compliance with the above procedures, Versico will notify the building owner that the warranty is being continued.

## VERSICO ROOFING SYSTEMS

### Care & Maintenance Instructions

The following maintenance items are the responsibility of the building owner and are not included within the scope of the Roofing System Warranty.

MAINTENANCE ITEM	ACTION
Drainage	Keep the roof surface clean at drain areas to avoid clogging. Check that ponding water is drained from the roof within 48 hours following rain.
Petroleum Products	Keep all petroleum products (solvents, greases, oils, or any liquids containing petroleum products) off the membrane to avoid degradation.
Animal Fats – EPDM Membranes	Do not exhaust kitchen wastes (vegetable oils) or other animal fats directly onto the roof surface. If incidental contact is likely, contact Versico for recommendations on membrane type and usage.
Animal Fats – TPO & PVC Membranes	TPO and PVC membranes for restaurant rooftop use will not void the warranty. A rooftop maintenance program must be in place to ensure that accumulations of animal fats/grease are regularly removed and the rooftop surface is cleaned with a mixture of warm soap and water and/or by other approved cleaning methods. See Versico's Installation Guide for specific cleaning instructions.
Chemicals	Contact Versico if any chemicals come in contact with the roofing membrane. Some chemicals could degrade the membrane or cause swelling.
Foot Traffic	Walkways must be provided if regular traffic is required or if rooftop equipment has a regular thirty (30) day or less maintenance schedule. Exercise caution when not walking on walkways, especially on white membranes (VersiGard white or VersiWeld) as ice or frost build-up may not be visible. All membranes are slippery when wet.
Roof Alterations	Please refer to the Versico Roofing System Revisions and Alteration procedures on the preceding page.
Cleaning	Handprints, footprints, general traffic grime, industrial pollutants and environmental dirt may be cleaned from the surface of the membrane by scrubbing with detergent and water, then rinsing with clean water. To maximize reflectivity, white membrane(s) should be cleaned once every two years.
Metal Work	Keep roof maintenance items such as counterflashing, metal curbs and metal ducts sealed watertight at all times.

*Continued on next page.*

## VERSICO ROOFING SYSTEMS

### Care & Maintenance Instructions *(continued)*

MAINTENANCE ITEM	ACTION
Leaks	<p>Locate the leak and determine if it is a roof membrane leak or a wall, curb, skylight, metal ductwork or plumbing leak. Deterioration or failure of building components that causes a leak is not covered by the warranty. A water leak may be indicated by soft or warped insulation.</p> <p>Physical damage to the membrane or flashing is not covered by the warranty.</p> <p>Please notify Versico's Warranty Services Department at 800.992.7663 if the leak is determined to be membrane related. The building owner must pay the investigation and repair cost if the problem is found to be outside the scope of the warranty.</p>
Temporary Repairs	<p>Use Lap Sealant or any good-grade rubber caulk to make temporary repairs. <b>Notify Versico of this action in writing.</b></p>
Hysunite and Acrylic Coatings	<p>Coatings are maintenance items and are excluded from the Versico warranty. Recoat when necessary.</p>
Roof Cement	<p><b>DO NOT USE ROOF CEMENT</b> to repair or install rubber membrane. Roof cement contains petroleum products that may degrade the membrane.</p>
Rooftop Maintenance	<p>When it is necessary for workers to be on the roof to service rooftop equipment (e.g. HVAC units, antennas, etc.) workers should be cautioned to use walkways and exercise care with their tools and equipment to avoid puncturing the roofing membrane.</p>

The preceding care and maintenance requirements are for VersiGard EPDM (black and white), VersiWeld, VersiFlex and VersiFleece Membrane Roofing Systems. The list is not meant to be exhaustive and is for illustrative purposes only. Versico recommends that your maintenance staff and/or maintenance contractor inspect the roof periodically or at least twice a year. The inspection should concentrate on high-risk areas such as roof hatches, drains and around all rooftop equipment as well as general inspection of the entire roof. The inspector should be looking for membrane damage (cuts and tears), oil or Freon leaks, chemical spills, and water infiltration into the roofing system.

Compliance with the above-listed care and maintenance requirements will aid in ensuring a durable, watertight membrane roofing system.



A SINGLE SOURCE FOR SINGLE-PLY ROOFING

**Versico**, PO Box 1289, Carlisle, PA 17013  
Tel: **800.992.7663** Fax: 717.960.4036 Web: **www.versico.com**

**EXHIBIT C-2 TO MASTER ENERGY SERVICES AGREEMENT**

**FORM OF ESS CONFIRMATION (SOLAR PV ONLY)**

(Attached)

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (“**Agreement**”) is entered into June 13, 2023 (“**Effective Date**”) by and between Monterey Solar 1 LLC (“**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 June 13, 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 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**” or 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. “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.
- f. “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.
- g. “Claim” shall have the meaning set forth in Section 17(b).

- h.** “Commencement of Installation” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- i.** “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.
- j.** “Commercial Operation Date” shall have the meaning set forth in Section 6(e).
- k.** “Confidential Information” shall have the meaning set forth in Section 20.
- l.** “Contract Price” shall mean the \$/kWh rate at which Purchaser purchases System Output from Seller. The Contract Rate is set forth in Exhibit 1.
- m.** “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.
- n.** “Defaulting Party” shall have the meaning set forth in Section 13.
- o.** “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.
- p.** “Effective Date” shall have the meaning set forth in the Preamble.
- q.** “Event of Default” shall have the meaning set forth in Section 13.
- r.** “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 (viii) theft of the Solar Facility or any material component thereof.
- s.** “Fair Market Value” shall have the meaning set forth in Section 16.
- t.** “Financing Party” shall have the meaning set forth in Section 19(b).
- u.** “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.

- v. “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.
- w. “Guaranteed Production” shall have the meaning set forth in Exhibit 1.
- x. “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.
- y. “Improvement” shall mean any buildings and other improvements on the Premises other than the System.
- z. “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.
- aa. “Indemnified Party” shall have the meaning set forth in Section 17.
- bb. “Indemnifying Party” shall have the meaning set forth in Section 17.
- cc. “Initial Term” shall be twenty-five (25) years beginning on the Commercial Operation Date, as set forth in Exhibit 1.
- dd. “Insolation” shall mean access to sunlight.
- ee. “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.
- ff. “Liabilities” shall have the meaning set forth in Section 17.
- gg. “Lost Income” shall have the meaning set forth in Section 7.
- hh. “Meter” shall mean Seller’s revenue grade meter at the Delivery Point.
- ii. “MESA” shall have the meaning set forth in the Preamble.
- jj. “Non-Defaulting Party” shall have the meaning set forth in Section 13.
- kk. “Outage” shall have the meaning set forth in Section 7(d).
- ll. “Outage Allowance” shall have the meaning set forth in Section 7(d).
- mm. “Party” or “Parties” shall have the meaning set forth in the Preamble.

- nn.** “Payment Default” shall have the meaning set forth in Section 13(a).
- oo.** “Premises” shall mean the Purchaser’s property where the System will be located. The Premises are depicted in Exhibit 2, Schedule A.
- pp.** “Premises Leases” means (a) the Lease Agreement by and between the County of Monterey Public Improvement Corporation and the Purchaser, dated as of August 1, 2017 pursuant to which the Premises and improvements thereon are leased to the County of Monterey as sublessee and (b) the Ground Lease by and between Purchaser and the County of Monterey Public Improvement Corporation, dated as of August 1, 2017 pursuant to which the Premises and improvements thereon are leased to the County of Monterey Public Improvement Corporation, as may be amended or otherwise modified from time to time.
- 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 may 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. **Performance Guarantee.** Seller shall deliver each Contract Year an amount of electric energy as set forth in the performance guarantee contained in Exhibit 1.
- d. **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.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of the 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 forty-eight (48) 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 forty-eight (48) 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. 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 Insulation 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).
- g. **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;
- viii. an Event of Default caused by the Purchaser occurs under any of the Premises Leases.

**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 (7<sup>th</sup>) Contract Year, the first day of the ninth (9<sup>th</sup>) Contract Year, the first day of the eleventh (11<sup>th</sup>) Contract Year, the first day of the sixteenth (16<sup>th</sup>) Contract Year, or the first day of the twentieth (20<sup>th</sup>) 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: \_\_\_\_\_

**MONTEREY SOLAR 1 LLC**

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

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

**Exhibit 1****Basic Terms and Conditions**

1. **Initial Term:** Twenty-five (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. **Contract Price:**

<b>Contract Year</b>	<b>Output (\$/kWh)</b>
1	\$0.18500
2	\$0.18870
3	\$0.19247
4	\$0.19632
5	\$0.20025
6	\$0.20425
7	\$0.20834
8	\$0.21251
9	\$0.21676
10	\$0.22109
11	\$0.22109
12	\$0.22109
13	\$0.22109
14	\$0.22109
15	\$0.22109
16	\$0.22109
17	\$0.22109
18	\$0.22109
19	\$0.22109
20	\$0.22109
21	\$0.22109
22	\$0.22109
23	\$0.22109
24	\$0.22109
25	\$0.22109

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.

7. **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).

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

Contract Year	Termination Payment (\$)
1	\$1,811,326.54
2	\$1,648,440.93
3	\$1,483,559.95
4	\$1,331,442.66
5	\$1,184,098.26
6	\$1,039,566.40
7	\$1,018,612.75
8	\$998,836.58
9	\$976,633.67
10	\$951,841.40
11	\$924,287.21
12	\$895,801.70
13	\$866,331.28
14	\$834,272.97
15	\$801,020.30
16	\$766,504.26
17	\$730,651.83
18	\$693,385.74
19	\$654,624.23
20	\$614,280.75
21	\$572,263.74
22	\$528,476.25
23	\$482,815.70
24	\$435,173.48
25	\$385,434.63

**9. 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	596,921	537,228
2	592,742	533,468
3	588,593	529,734

4	584,473	526,025
5	580,381	522,343
6	576,319	518,687
7	572,285	515,056
8	568,279	511,451
9	564,301	507,871
10	560,350	504,315
11	556,428	500,785
12	552,533	497,280
13	548,665	493,799
14	544,825	490,342
15	541,011	486,910
16	537,224	483,501
17	533,463	480,117
18	529,729	476,756
19	526,021	473,419
20	522,339	470,105
21	518,682	466,814
22	515,052	463,546
23	511,446	460,302
24	507,866	457,079
25	504,311	453,880

\* 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:** 1414 Natividad Rd., Salinas, 93906, CA
2. **System Size (DC kW):** 389 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

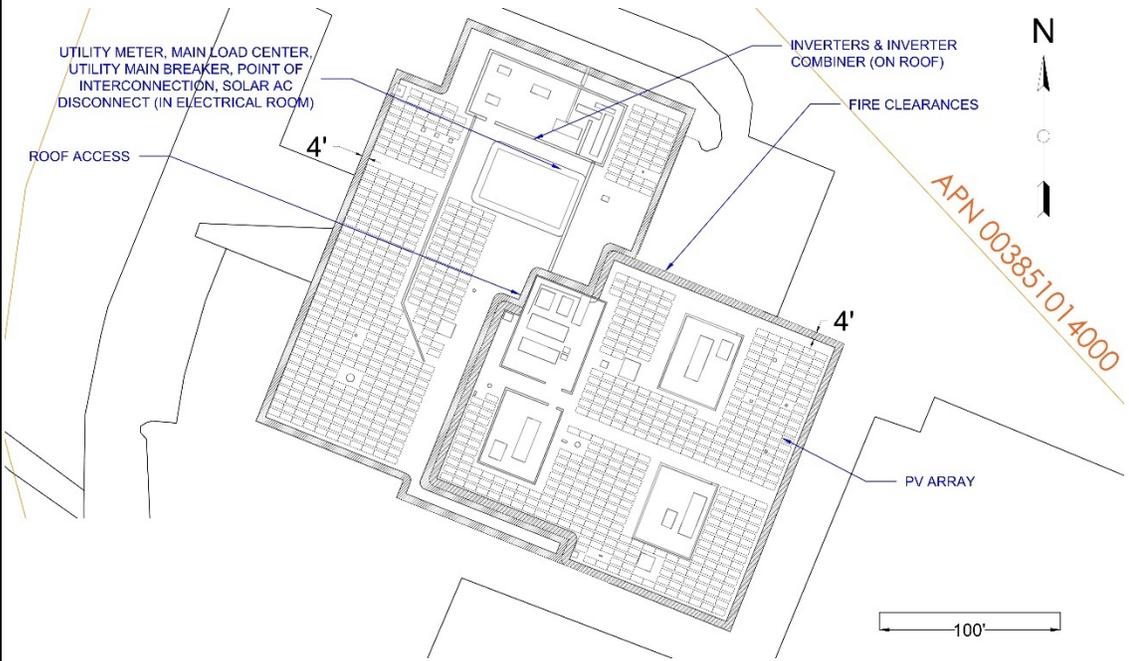
PV System:

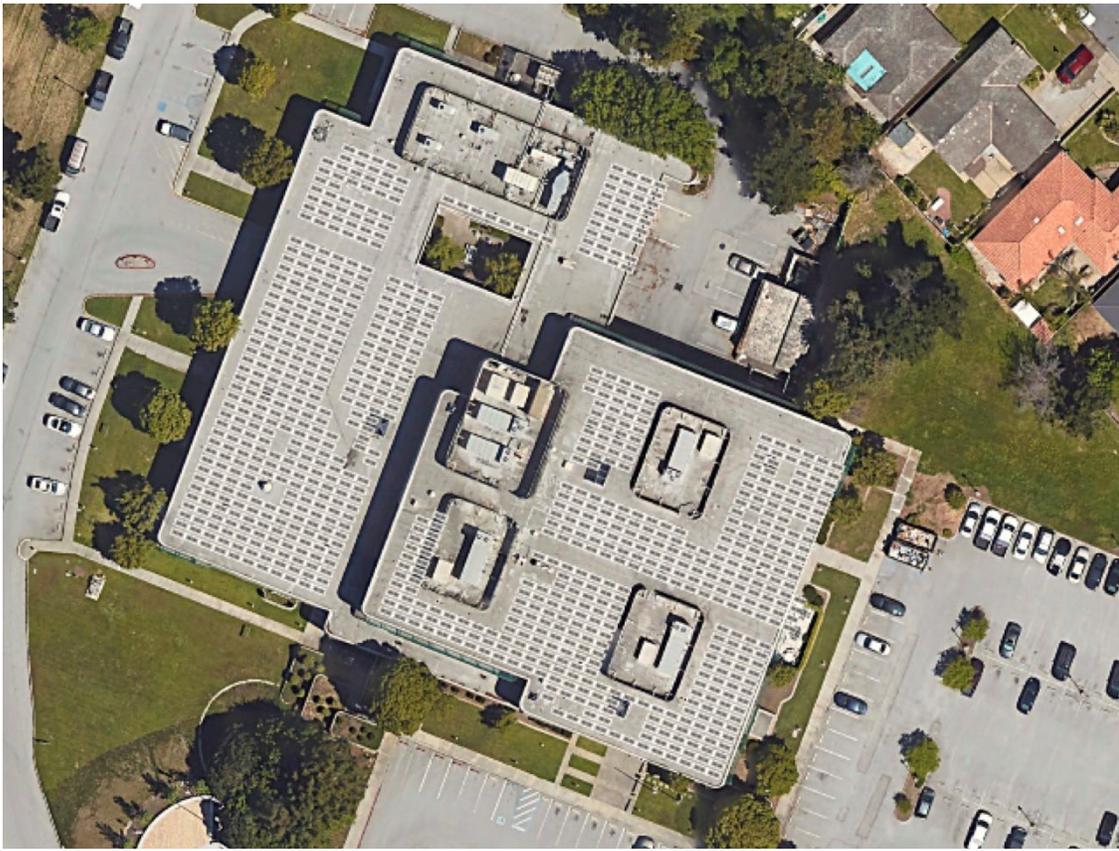
Modules: Boviet BVM6612M9(S)-HC or Tier 1 Equivalent  
Inverters: SolarEdge SE66.6KUS / SE100KUS or equivalent

4. **Host Utility:** PG&E (“Utility”)
5. **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**

1414 Natividad Rd, Salinas, CA
<b>Site and Facility Descriptions</b>





**Exhibit 3**  
**Copy of Roof Warranty**



# EverGuard® Diamond Pledge™

## NDL Roof Guarantee



<b>MONTEREY COUNTY SHERIFF DEPARTMENT, SALINAS, CA 93906</b>	<b>G2021-00004421</b>
OWNER OF BUILDING	GUARANTEE NUMBER
<b>MONTEREY COUNTY SHERIFF DEPARTMENT UPPER ROOF</b>	<b>30 YEAR</b>
NAME OF BUILDING	PERIOD OF COVERAGE
<b>1414 NATIVIDAD ROAD, SALINAS, CA 93906</b>	<b>09/16/2021</b>
ADDRESS OF BUILDING	DATE OF COMPLETION
<b>309.00</b>	<b>09/16/2051</b>
AREA OF ROOF (SQUARES)	GUARANTEE EXPIRATION DATE
<b>NOBLE PRIDE ROOFING COMPANY INC / SALINAS, CA</b>	<b>TFAT180FB</b>
APPLIED BY	ROOF SPECIFICATION

### THE GUARANTEE/SOLE AND EXCLUSIVE REMEDY

GAF guarantees to you, the owner of the building described above, that GAF will provide "Edge To Edge" protection by repairing leaks through the GAF roofing membrane, liquid-applied membrane or coating, base flashing, high wall waterproofing flashing, insulation, expansion joint covers, preflashed accessories, and metal flashings used by the contractor of record that were designed and installed in accordance with an appropriate ES-1 certified edge detail (the "GAF Roofing Materials") resulting from a manufacturing defect, ordinary wear and tear, or workmanship in applying the GAF Roofing Materials. There is no dollar limit on covered repairs. Leaks caused by any non-GAF materials, such as the roof deck or non-GAF insulation, are not covered.

### GUARANTEE PERIOD

This guarantee ends on the expiration date listed above. **NOTE:** Lexsuco® flashings are covered by this guarantee **ONLY** for the first ten years.

### OWNER RESPONSIBILITIES

#### Notification of Leaks

In the event of a leak through the GAF Roofing Materials, you **MUST** make sure that GAF is notified directly about the leak, in writing, within **30 days** either online at [leakreporting.gaf.com](mailto:leakreporting.gaf.com), by email at [guaranteeleak@gaf.com](mailto:guaranteeleak@gaf.com), or by postal mail to GAF Warranty Claims Department, 1 Campus Drive, Parsippany, NJ 07054, or GAF will have no responsibility for making repairs. **NOTE:** The roofing contractor is **NOT** an agent of GAF; notice to the roofing contractor is **NOT** notice to GAF.

By notifying GAF, you authorize GAF to investigate the cause of the leak. If the investigation reveals that the leak is not covered by this guarantee, you agree to pay an investigation cost of \$500. This guarantee will be cancelled if you fail to pay this cost within 30 days of receipt of an invoice for it.

#### Preventative Maintenance and Repairs

- You must perform regular inspections and maintenance and keep records of this work.
- To keep this guarantee in effect, you must repair any conditions in the building structure or roofing system that are not covered by this guarantee but that GAF concludes may be threatening the integrity of the GAF Roofing Materials. Any such repairs must be performed by a GAF-certified roofing contractor. Failure to make timely repairs may jeopardize guarantee coverage.
- You may make temporary repairs to minimize damage to the building or its contents in an emergency, at your sole expense. These repairs will not result in cancellation of the guarantee as long as they are reasonable and customary and do not result in permanent damage to the GAF Roofing Materials.
- Any equipment or material that impedes any inspection or repair must be removed at your expense so that GAF can perform inspections or repairs.

### EXCLUSIONS FROM COVERAGE

(e.g., items that are not "ordinary wear and tear" or are beyond the control of GAF)

This guarantee does **NOT** cover conditions other than leaks. This guarantee also does **NOT** cover leaks caused by any of the following:

- Inadequate roof maintenance, that is, the failure to follow the Scheduled Maintenance Checklists provided with this guarantee (extra copies available by calling Guarantee Services at 1-877-GAF-ROOF) or the failure to repair owner responsibility items.
- Unusual weather conditions or natural disasters including, but not limited to, winds in excess of 55 miles per hour, hail, floods, hurricanes, lightning, tornados, and earthquakes, unless specifically covered by an addendum to this guarantee.
- Impact of foreign objects or physical damage caused by any intentional or negligent acts, accidents, misuse, abuse, or the like.
- Damage to the roof constructed of the GAF Roofing Materials due to: (a) movement, cracking, or other failure of the roof deck or building; (b) improper installation or failure of any non-GAF insulation or materials; (c) condensation or infiltration of moisture through or around the walls, copings, building structure, or surrounding materials except where high wall GAF waterproofing flashings are installed; (d) chemical attack on the membrane, including, but not limited to, exposure to grease or oil; (e) the failure of wood nailers to remain attached to the structure; (f) moisture migration from the building interior or any building component other than the GAF Roofing Materials; (g) use of materials that are incompatible with the GAF Roofing Materials; or (h) architectural, engineering, or design defects or flaws.
- Traffic of any nature on the roof unless using GAF walkways applied in accordance with GAF published application instructions.
- Blisters in the GAF Roofing Materials that have not resulted in leaks.
- Changes in the use of the building or any repairs, installation of any overburden, modifications, or additions to the GAF Roofing Materials after the roof is completed, unless prior written approval is obtained from GAF.
- Exposure to sustained high-temperature conditions; however, for systems utilizing EverGuard Extreme® TPO membrane, exposure in excess of 195°F.

No representative, employee, or agent of GAF, or any other person, has the authority to assume any additional or other liability or responsibility for GAF, unless it is in writing and signed by an authorized GAF Field Services Manager or Director. GAF does not practice engineering or architecture. Neither the issuance of this guarantee, nor any review of the roof constructed of the GAF Roofing Materials (or the plans for the roof), by GAF shall constitute any warranty of such plans, specifications or construction, or the suitability or code compliance of the GAF Roofing Materials for any particular structure. **NOTE:** Any inspections made by GAF are limited to a surface inspection only, are for the sole benefit of GAF, and do not constitute a waiver or extension of any of the terms and conditions of this guarantee.

This guarantee **MAY BE SUSPENDED OR CANCELLED IF THE ROOF IS DAMAGED BY** any cause listed above as **AN EXCLUSION FROM COVERAGE** that may affect the integrity or watertightness of the roof.

### TRANSFERABILITY

You may transfer or assign this guarantee to a subsequent owner of this building for the remaining term only if: 1) the request is in writing to GAF at the address listed below within 60 days after ownership transfer; 2) you make any repairs to the GAF Roofing Materials or other roofing or building components that are identified by GAF after an inspection as necessary to preserve the integrity of the GAF Roofing Materials; and 3) you pay an assignment fee of \$500. This guarantee is **NOT** otherwise transferable or assignable by contract or operation of law, either directly or indirectly.

### LIMITATION OF DAMAGES; MEDIATION; JURISDICTION; CHOICE OF LAW

THIS GUARANTEE IS EXPRESSLY IN LIEU OF ANY OTHER GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and of any other obligations or liability of GAF, whether any claim against it is based upon negligence, breach of warranty, or any other theory. In **NO** event shall GAF be liable for any CONSEQUENTIAL OR INCIDENTAL DAMAGES of any kind, including, but not limited to, interior or exterior damages and/or mold growth.

The parties agree that, as a condition precedent to litigation, any controversy or claim relating to this guarantee shall be first submitted to mediation before a mutually acceptable mediator unless GAF, at its sole option, elects to waive said requirement. In the event that mediation is unsuccessful, or is waived by GAF, the parties agree that neither one will commence or prosecute any lawsuit or proceedings other than before the appropriate state or federal court in the State of New Jersey. This guarantee shall be governed by the laws of the State of New Jersey, without regard to principles of conflicts of laws. Each party irrevocably consents to the jurisdiction and venue of the above identified courts.

**NOTE:** GAF shall have no obligation under this guarantee unless and until all bills for installation and supplies have been paid in full to the roofing contractor and materials suppliers, and the guarantee charge has been paid to GAF.

By:  09/20/2021  
Authorized Signature

GAF  
1 CAMPUS DRIVE  
PARSIPPANY, NJ 07054

Visit [gaf.com](http://gaf.com)

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We protect what matters most™



**EXHIBIT D TO MASTER ENERGY SERVICES AGREEMENT**  
**FORM OF ESS CONFIRMATION (ENERGY STORAGE ONLY)**

**(To be attached at a later date, subject to the County of Monterey's and Mynt's written agreement)**

**EXHIBIT E TO MASTER ENERGY SERVICES AGREEMENT**  
**FORM OF ESS CONFIRMATION (EV CHARGING)**

**(To be attached at a later date, subject to the County of Monterey's and Mynt's written agreement)**

**EXHIBIT F TO MASTER ENERGY SERVICES AGREEMENT**

**FORM OF ESS CONFIRMATION (ENERGY AND WATER EFFICIENCY SYSTEMS)**

**(To be attached at a later date, subject to the County of Monterey's and Mynt's written agreement)**

**EXHIBIT G TO MASTER ENERGY SERVICES AGREEMENT**

**FORM OF ESS CONFIRMATION (HVAC)**

**(To be attached at a later date, subject to the County of Monterey's and Mynt's written agreement)**

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (“**Agreement**”) is entered into June 13, 2023 (“**Effective Date**”) by and between Monterey Solar 1 LLC (“**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 June 13, 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 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**” or 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. “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.
- f. “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.
- g. “Claim” shall have the meaning set forth in Section 17(b).

- h.** “Commencement of Installation” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- i.** “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.
- j.** “Commercial Operation Date” shall have the meaning set forth in Section 6(e).
- k.** “Confidential Information” shall have the meaning set forth in Section 20.
- l.** “Contract Price” shall mean the \$/kWh rate at which Purchaser purchases System Output from Seller. The Contract Rate is set forth in Exhibit 1.
- m.** “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.
- n.** “Defaulting Party” shall have the meaning set forth in Section 13.
- o.** “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.
- p.** “Effective Date” shall have the meaning set forth in the Preamble.
- q.** “Event of Default” shall have the meaning set forth in Section 13.
- r.** “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 (viii) theft of the Solar Facility or any material component thereof.
- s.** “Fair Market Value” shall have the meaning set forth in Section 16.
- t.** “Financing Party” shall have the meaning set forth in Section 19(b).
- u.** “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.

- v. “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.
- w. “Guaranteed Production” shall have the meaning set forth in Exhibit 1.
- x. “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.
- y. “Improvement” shall mean any buildings and other improvements on the Premises other than the System.
- z. “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.
- aa. “Indemnified Party” shall have the meaning set forth in Section 17.
- bb. “Indemnifying Party” shall have the meaning set forth in Section 17.
- cc. “Initial Term” shall be twenty-five (25) years beginning on the Commercial Operation Date, as set forth in Exhibit 1.
- dd. “Insolation” shall mean access to sunlight.
- ee. “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.
- ff. “Liabilities” shall have the meaning set forth in Section 17.
- gg. “Lost Income” shall have the meaning set forth in Section 7.
- hh. “Meter” shall mean Seller’s revenue grade meter at the Delivery Point.
- ii. “MESA” shall have the meaning set forth in the Preamble.
- jj. “Non-Defaulting Party” shall have the meaning set forth in Section 13.
- kk. “Outage” shall have the meaning set forth in Section 7(d).
- ll. “Outage Allowance” shall have the meaning set forth in Section 7(d).
- mm. “Party” or “Parties” shall have the meaning set forth in the Preamble.

- nn.** “Payment Default” shall have the meaning set forth in Section 13(a).
- oo.** “Premises” shall mean the Purchaser’s property where the System will be located. The Premises are depicted in Exhibit 2, Schedule A.
- pp.** “Premises Leases” means (a) the Lease Agreement by and between the County of Monterey Public Improvement Corporation and the Purchaser, dated as of August 1, 2017 pursuant to which the Premises and improvements thereon are leased to the County of Monterey as sublessee and (b) the Ground Lease by and between Purchaser and the County of Monterey Public Improvement Corporation, dated as of August 1, 2017 pursuant to which the Premises and improvements thereon are leased to the County of Monterey Public Improvement Corporation, as may be amended or otherwise modified from time to time.
- 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 may 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. **Performance Guarantee.** Seller shall deliver each Contract Year an amount of electric energy as set forth in the performance guarantee contained in Exhibit 1.
- d. **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.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of the 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 forty-eight (48) 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 forty-eight (48) 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. 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 Insulation 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).
- g. **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;
- viii. an Event of Default caused by the Purchaser occurs under any of the Premises Leases.

**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 (7<sup>th</sup>) Contract Year, the first day of the ninth (9<sup>th</sup>) Contract Year, the first day of the eleventh (11<sup>th</sup>) Contract Year, the first day of the sixteenth (16<sup>th</sup>) Contract Year, or the first day of the twentieth (20<sup>th</sup>) 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**

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

DocuSigned by:  
**MONTEREY SOLAR 1 LLC**

By: \_\_\_\_\_  
Name: Myco Systems Inc. , it's sole member  
Title: Corrina Hansen CFO  
Date: 6/2/2023

DocuSigned by:  
By: \_\_\_\_\_  
Name: Myco Systems , it's sole member,  
Title: Derek Hansen CEO  
Date: 6/2/2023

**Exhibit 1****Basic Terms and Conditions**

1. **Initial Term:** Twenty-five (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. **Contract Price:**

<b>Contract Year</b>	<b>Output (\$/kWh)</b>
1	\$0.18500
2	\$0.18870
3	\$0.19247
4	\$0.19632
5	\$0.20025
6	\$0.20425
7	\$0.20834
8	\$0.21251
9	\$0.21676
10	\$0.22109
11	\$0.22109
12	\$0.22109
13	\$0.22109
14	\$0.22109
15	\$0.22109
16	\$0.22109
17	\$0.22109
18	\$0.22109
19	\$0.22109
20	\$0.22109
21	\$0.22109
22	\$0.22109
23	\$0.22109
24	\$0.22109
25	\$0.22109

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.

7. **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).

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

Contract Year	Termination Payment (\$)
1	\$1,811,326.54
2	\$1,648,440.93
3	\$1,483,559.95
4	\$1,331,442.66
5	\$1,184,098.26
6	\$1,039,566.40
7	\$1,018,612.75
8	\$998,836.58
9	\$976,633.67
10	\$951,841.40
11	\$924,287.21
12	\$895,801.70
13	\$866,331.28
14	\$834,272.97
15	\$801,020.30
16	\$766,504.26
17	\$730,651.83
18	\$693,385.74
19	\$654,624.23
20	\$614,280.75
21	\$572,263.74
22	\$528,476.25
23	\$482,815.70
24	\$435,173.48
25	\$385,434.63

**9. 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	596,921	537,228
2	592,742	533,468
3	588,593	529,734

4	584,473	526,025
5	580,381	522,343
6	576,319	518,687
7	572,285	515,056
8	568,279	511,451
9	564,301	507,871
10	560,350	504,315
11	556,428	500,785
12	552,533	497,280
13	548,665	493,799
14	544,825	490,342
15	541,011	486,910
16	537,224	483,501
17	533,463	480,117
18	529,729	476,756
19	526,021	473,419
20	522,339	470,105
21	518,682	466,814
22	515,052	463,546
23	511,446	460,302
24	507,866	457,079
25	504,311	453,880

\* 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:** 1414 Natividad Rd., Salinas, 93906, CA
2. **System Size (DC kW):** 389 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

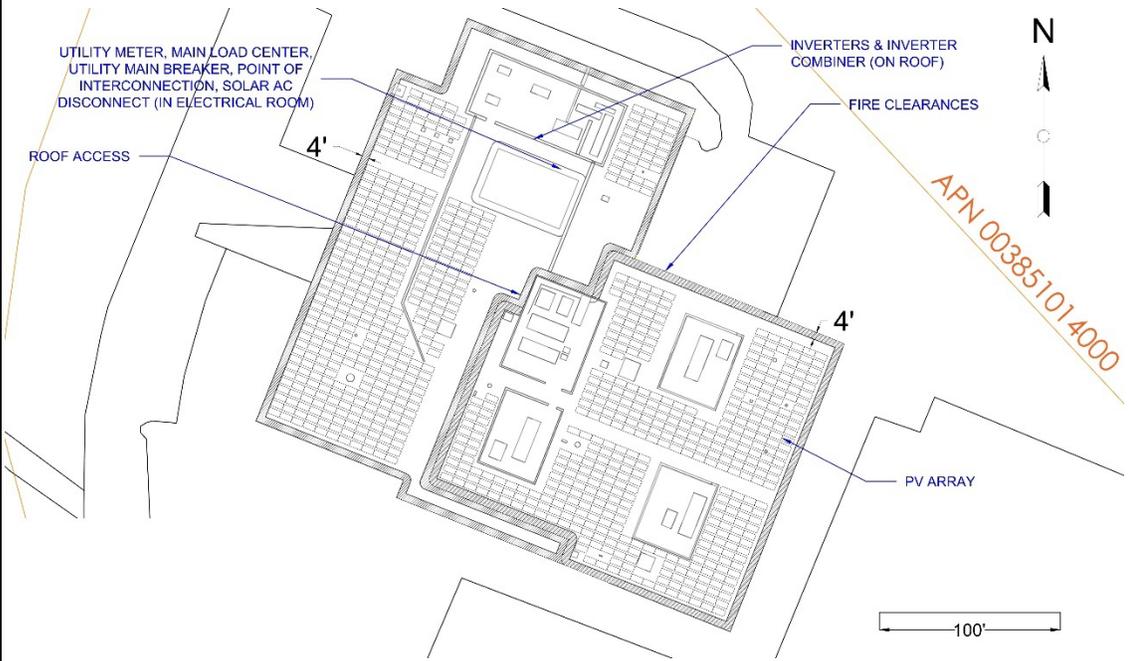
PV System:

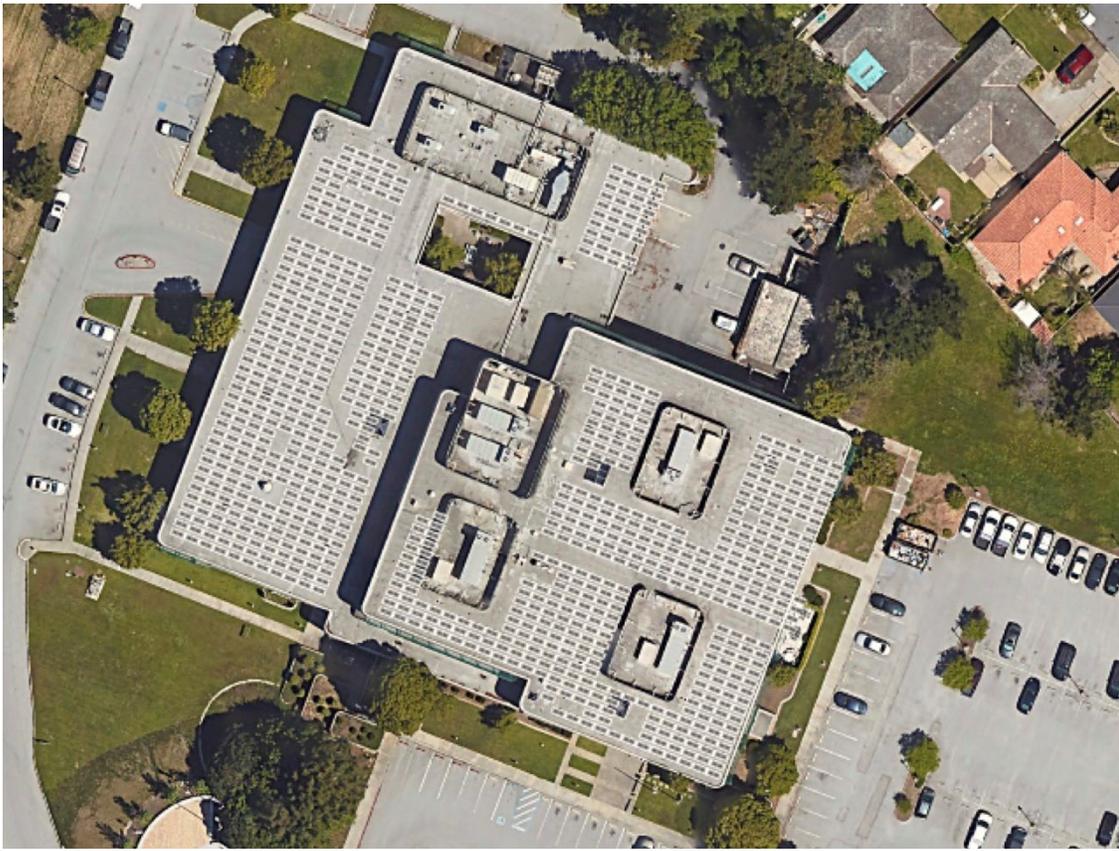
Modules: Boviet BVM6612M9(S)-HC or Tier 1 Equivalent  
Inverters: SolarEdge SE66.6KUS / SE100KUS or equivalent

4. **Host Utility:** PG&E (“Utility”)
5. **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**

1414 Natividad Rd, Salinas, CA
<b>Site and Facility Descriptions</b>





**Exhibit 3**  
**Copy of Roof Warranty**



# EverGuard® Diamond Pledge™

## NDL Roof Guarantee



<b>MONTEREY COUNTY SHERIFF DEPARTMENT, SALINAS, CA 93906</b>	<b>G2021-00004421</b>
OWNER OF BUILDING	GUARANTEE NUMBER
<b>MONTEREY COUNTY SHERIFF DEPARTMENT UPPER ROOF</b>	<b>30 YEAR</b>
NAME OF BUILDING	PERIOD OF COVERAGE
<b>1414 NATIVIDAD ROAD, SALINAS, CA 93906</b>	<b>09/16/2021</b>
ADDRESS OF BUILDING	DATE OF COMPLETION
<b>309.00</b>	<b>09/16/2051</b>
AREA OF ROOF (SQUARES)	GUARANTEE EXPIRATION DATE
<b>NOBLE PRIDE ROOFING COMPANY INC / SALINAS, CA</b>	<b>TFAT180FB</b>
APPLIED BY	ROOF SPECIFICATION

### THE GUARANTEE/SOLE AND EXCLUSIVE REMEDY

GAF guarantees to you, the owner of the building described above, that GAF will provide "Edge To Edge" protection by repairing leaks through the GAF roofing membrane, liquid-applied membrane or coating, base flashing, high wall waterproofing flashing, insulation, expansion joint covers, preflashed accessories, and metal flashings used by the contractor of record that were designed and installed in accordance with an appropriate ES-1 certified edge detail (the "GAF Roofing Materials") resulting from a manufacturing defect, ordinary wear and tear, or workmanship in applying the GAF Roofing Materials. There is no dollar limit on covered repairs. Leaks caused by any non-GAF materials, such as the roof deck or non-GAF insulation, are not covered.

### GUARANTEE PERIOD

This guarantee ends on the expiration date listed above. **NOTE:** Lexsuco® flashings are covered by this guarantee **ONLY** for the first ten years.

### OWNER RESPONSIBILITIES

#### Notification of Leaks

In the event of a leak through the GAF Roofing Materials, you **MUST** make sure that GAF is notified directly about the leak, in writing, within **30 days** either online at leakreporting.gaf.com, by email at guaranteeleak@gaf.com, or by postal mail to GAF Warranty Claims Department, 1 Campus Drive, Parsippany, NJ 07054, or GAF will have no responsibility for making repairs. **NOTE:** The roofing contractor is **NOT** an agent of GAF; notice to the roofing contractor is **NOT** notice to GAF.

By notifying GAF, you authorize GAF to investigate the cause of the leak. If the investigation reveals that the leak is not covered by this guarantee, you agree to pay an investigation cost of \$500. This guarantee will be cancelled if you fail to pay this cost within 30 days of receipt of an invoice for it.

#### Preventative Maintenance and Repairs

- You must perform regular inspections and maintenance and keep records of this work.
- To keep this guarantee in effect, you must repair any conditions in the building structure or roofing system that are not covered by this guarantee but that GAF concludes may be threatening the integrity of the GAF Roofing Materials. Any such repairs must be performed by a GAF-certified roofing contractor. Failure to make timely repairs may jeopardize guarantee coverage.
- You may make temporary repairs to minimize damage to the building or its contents in an emergency, at your sole expense. These repairs will not result in cancellation of the guarantee as long as they are reasonable and customary and do not result in permanent damage to the GAF Roofing Materials.
- Any equipment or material that impedes any inspection or repair must be removed at your expense so that GAF can perform inspections or repairs.

### EXCLUSIONS FROM COVERAGE

(e.g., items that are not "ordinary wear and tear" or are beyond the control of GAF)

This guarantee does **NOT** cover conditions other than leaks. This guarantee also does **NOT** cover leaks caused by any of the following:

- Inadequate roof maintenance, that is, the failure to follow the Scheduled Maintenance Checklists provided with this guarantee (extra copies available by calling Guarantee Services at 1-877-GAF-ROOF) or the failure to repair owner responsibility items.
- Unusual weather conditions or natural disasters including, but not limited to, winds in excess of 55 miles per hour, hail, floods, hurricanes, lightning, tornados, and earthquakes, unless specifically covered by an addendum to this guarantee.
- Impact of foreign objects or physical damage caused by any intentional or negligent acts, accidents, misuse, abuse, or the like.
- Damage to the roof constructed of the GAF Roofing Materials due to: (a) movement, cracking, or other failure of the roof deck or building; (b) improper installation or failure of any non-GAF insulation or materials; (c) condensation or infiltration of moisture through or around the walls, copings, building structure, or surrounding materials except where high wall GAF waterproofing flashings are installed; (d) chemical attack on the membrane, including, but not limited to, exposure to grease or oil; (e) the failure of wood nailers to remain attached to the structure; (f) moisture migration from the building interior or any building component other than the GAF Roofing Materials; (g) use of materials that are incompatible with the GAF Roofing Materials; or (h) architectural, engineering, or design defects or flaws.
- Traffic of any nature on the roof unless using GAF walkways applied in accordance with GAF published application instructions.
- Blisters in the GAF Roofing Materials that have not resulted in leaks.
- Changes in the use of the building or any repairs, installation of any overburden, modifications, or additions to the GAF Roofing Materials after the roof is completed, unless prior written approval is obtained from GAF.
- Exposure to sustained high-temperature conditions; however, for systems utilizing EverGuard Extreme® TPO membrane, exposure in excess of 195°F.

No representative, employee, or agent of GAF, or any other person, has the authority to assume any additional or other liability or responsibility for GAF, unless it is in writing and signed by an authorized GAF Field Services Manager or Director. GAF does not practice engineering or architecture. Neither the issuance of this guarantee, nor any review of the roof constructed of the GAF Roofing Materials (or the plans for the roof), by GAF shall constitute any warranty of such plans, specifications or construction, or the suitability or code compliance of the GAF Roofing Materials for any particular structure. **NOTE:** Any inspections made by GAF are limited to a surface inspection only, are for the sole benefit of GAF, and do not constitute a waiver or extension of any of the terms and conditions of this guarantee.

This guarantee **MAY BE SUSPENDED OR CANCELLED IF THE ROOF IS DAMAGED BY** any cause listed above as **AN EXCLUSION FROM COVERAGE** that may affect the integrity or watertightness of the roof.

### TRANSFERABILITY

You may transfer or assign this guarantee to a subsequent owner of this building for the remaining term only if: 1) the request is in writing to GAF at the address listed below within 60 days after ownership transfer; 2) you make any repairs to the GAF Roofing Materials or other roofing or building components that are identified by GAF after an inspection as necessary to preserve the integrity of the GAF Roofing Materials; and 3) you pay an assignment fee of \$500. This guarantee is **NOT** otherwise transferable or assignable by contract or operation of law, either directly or indirectly.

### LIMITATION OF DAMAGES; MEDIATION; JURISDICTION; CHOICE OF LAW

THIS GUARANTEE IS EXPRESSLY IN LIEU OF ANY OTHER GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and of any other obligations or liability of GAF, whether any claim against it is based upon negligence, breach of warranty, or any other theory. In **NO** event shall GAF be liable for any CONSEQUENTIAL OR INCIDENTAL DAMAGES of any kind, including, but not limited to, interior or exterior damages and/or mold growth.

The parties agree that, as a condition precedent to litigation, any controversy or claim relating to this guarantee shall be first submitted to mediation before a mutually acceptable mediator unless GAF, at its sole option, elects to waive said requirement. In the event that mediation is unsuccessful, or is waived by GAF, the parties agree that neither one will commence or prosecute any lawsuit or proceedings other than before the appropriate state or federal court in the State of New Jersey. This guarantee shall be governed by the laws of the State of New Jersey, without regard to principles of conflicts of laws. Each party irrevocably consents to the jurisdiction and venue of the above identified courts.

**NOTE:** GAF shall have no obligation under this guarantee unless and until all bills for installation and supplies have been paid in full to the roofing contractor and materials suppliers, and the guarantee charge has been paid to GAF.

By:  **09/20/2021**  
Authorized Signature

GAF  
1 CAMPUS DRIVE  
PARSIPPANY, NJ 07054

Visit [gaf.com](http://gaf.com)

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We protect what matters most™



*Execution Version*

## **ROOFTOP SYSTEM SITE LEASE AGREEMENT**

This ROOFTOP SYSTEM SITE LEASE AGREEMENT (this “Lease”) is made and entered into as of June 13, 2023 (the “Effective Date”) by and between Monterey Solar 1 LLC a California limited liability company (“Lessee”), and the County of Monterey, a political subdivision of the State of California (“Lessor”). Each of Lessor and Lessee are sometimes referred to as a “Party” and collectively as the “Parties.” “Lessee” shall include any permitted assignees pursuant to an assignment under Section 15.1.

WHEREAS, Lessor is the owner of certain improved real property located at 1441 Schilling Place Salinas, CA 93901 (the “Premises”), and desires to grant a lease of the rooftop areas on said improvements and the portion of the Premises underlying the related battery energy storage system, as more particularly described on Exhibit A (the “Project Site”), which includes the area on which the System (hereinafter defined) will be installed; and

WHEREAS, pursuant to the terms of that certain Power Purchase Agreement (“PPA”) between Lessee and Lessor, dated as of the date hereof, Lessee intends to own, and operate certain photovoltaic solar energy generation and storage equipment and associated facilities, as described in Exhibit C (the “System”) and desires to obtain a lease of the Project Site in order to install and operate the System.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

### **AGREEMENT**

- 1. DEFINITIONS.** Capitalized terms shall have the meanings assigned to them herein.
- 2. LEASE.**

**2.1 Lease.** Lessor hereby leases to Lessee the non-exclusive rights to use and access the Premises for the purposes of installing, maintaining, repairing and decommissioning the System, in accordance with the terms and conditions and for the purposes set forth herein. The Parties intend that this Lease create a valid and present interest in the Premises in favor of Lessee. Therefore, this Lease is an interest in and encumbrance upon the Premises which shall run with the land and shall be binding upon the Premises, and Lessor and its successors and assigns for the benefit of Lessee and its successors and assigns.

**2.2 Term.** The term of this Lease shall commence on the Effective Date and shall be coterminous with the term of the PPA (“Term”).

In the event Lessor exercises an option to purchase the System pursuant to the PPA or Lessee otherwise transfers the equipment constituting the System to Lessor under the PPA, this Lease shall terminate as of the date of the closing of such transfer.

**2.3** Payment to Lessor. Lessee shall pay to Lessor as rent the one-time sum of \$1 (the “One-Time Payment”) within fifteen (15) days after the Effective Date. Lessor acknowledges and agrees that the One-Time Payment constitutes payment in full of rent for the Term, and no additional amount shall be due or owing to Lessor under this Lease.

**2.4** Permitted Uses. Lessee shall have the exclusive right to occupy and use the Project Site for solar energy conversion, for the collection, storage, and transmission of electric power, and for related and incidental purposes and activities (collectively, “Operations”) including, but not limited to, the construction, installation, improvement, relocation, operation, maintenance and repair of the System and removal of the System. Lessee agrees that said right shall be non-exclusive to other uses of the rooftop areas, provided that such other uses shall in no event impair or interfere with its Operations.

**2.5** Lessee’s Exercise of Rights. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee shall not unreasonably interfere with Lessor’s use, operation, or maintenance of the Premises. The System shall be installed within the areas of the Project Site.

**2.6** Premises Utilities. Unless stated otherwise in the PPA, Lessor shall provide existing and available utilities to the Project Site in connection with Lessee's construction, start-up, maintenance, repair, replacement, operation and removal of the System. Lessor acknowledges and agrees that Lessee’s use of the Premises includes the nonexclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, and telephone and communication lines.

**2.7** Construction Laydown Area. Lessor shall provide Lessee sufficient space on the Premises for the temporary storage and staging of tools, materials and equipment reasonably necessary during installation and any maintenance, repair, replacement or removal of the System, provided that Lessee shall use commercially reasonable efforts to minimize disruption to Lessor’s operations, and provided further that Lessee understands and acknowledges that space is limited at the Premises. Lessor and Lessee shall coordinate and cooperate in determining the amount of space and specific portion of the Premises necessary for such purposes. Lessee shall have access to such area twenty (24) hours a day, seven (7) days per week.

**2.8** Notice. Except as may be required by an emergency, Lessee shall give Lessor reasonable written or telephonic notice before any entry onto the Premises outside of normal business hours by Lessee’s employees, agents, or contractors. Notwithstanding anything to the contrary in this Lease, Lessee shall be permitted to access the Premises (i) during normal business hours; and (ii) twenty-four (24) hours a day, seven (7) days a week for emergency purposes as reasonably determined by Lessee. In the event Lessee enters the Premises due to an emergency, Lessee shall promptly notify Lessor of its entry and the nature of the emergency. Unless otherwise agreed in advance, normal business hours shall mean Monday through Friday, 8AM through 5PM on those days the Lessor’s administrative offices are open.

### 3. EASEMENTS.

**3.1 Access Easement and Use Rights.** Lessor grants Lessee a nonexclusive easement for access and use of the Premises, on, under, over, and across the Premises, seven (7) days a week, twenty four (24) hours a day, excluding that portion of the Premises used as the county jail and which has restricted public access, for the purposes of locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the "Use Rights"). The Use Rights include the right of parking, access, and ingress to and egress from the System on, over, and across the Premises during the Term, and shall survive for a period of one hundred eighty (180) days following the termination of this Lease for the purpose of removing the System. Without limiting the foregoing grant, Lessor covenants that the Use Rights may be used to achieve all the purposes set forth in this Lease. Throughout the Term of the Lease, as described below, Lessor hereby grants Lessee an easement through the Premises, including all elevators, stairways or other access points of egress and ingress for purposes of accessing the rooftop of the Premises for the purpose described herein and pursuant to the terms and conditions set forth below.

#### **3.2 Solar Easement.**

3.2.1 Open Access to Sun. Lessor hereby grants and conveys to Lessee an exclusive easement on, over and across the Premises for the following: the open and unobstructed access to the sun to the System (except the battery storage-related portion of the System) on any of the Premises and to ensure adequate exposure of the System to the sun. In addition, Lessor hereby grants and conveys to Lessee an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "Solar Easement") throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any System is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises.

3.2.2 Lessor Improvements. Trees, buildings and other improvements located on the Premises as of the date of this Lease will be allowed to remain, and Lessee may not require their removal. Lessor may not place or plant any trees, buildings or improvements (an "Improvement") on the Premises after the date of this Lease which may, in Lessee's sole judgment, impede or materially interfere with the open and unobstructed access to the sun to any Site or System, unless Lessor has received written approval from Lessee for any such trees, structure or improvement. Subject to the foregoing, Lessor may construct an Improvement on the Premises if such Improvement meets the following requirements:

- (a) Such Improvement poses no interference with any part of the System located on the Premises; and

(b) Such Improvement has a Maximum Height = [(distance to fenceline) + 20') / 3], with such Improvements being located at least 20' from the nearest fence line or edge of the Premises.

(an Improvement that complies with all of the foregoing restrictions will be referred to as a "Permitted Improvement").

Lessor may construct such Permitted Improvements without the prior consent of Lessee. However, should Lessor construct an Improvement that is determined by Lessee to violate or not be in compliance with any of the restrictions of this section, Lessee may provide notice to Lessor that said Improvement must be removed within thirty (30) days of Lessor's receipt of Lessee's notice. Should Lessor fail to remove the non-complying Improvement within such thirty (30) day period, Lessee may cause the same to be removed and may off-set the cost of the removal against any lease payments due hereunder to Lessor.

3.2.3 No Interference. Lessor will not materially interfere with, and will not allow any other party to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Premises.

**3.3 Cable Easement.** Lessor hereby grants and conveys to Lessee, a non-exclusive easement to use portions of the Premise's riser systems, chase ways, exterior wall surface, roof surface, ground surface or below ground (the "Cable Easement"); which areas shall be referred to herein as the "Cable Easement Area," for the purposes of installing, operating, maintaining, interconnecting, repairing, removing and replacing cables, conduits, network connections, data acquisition and telecommunications lines and related transmission lines, all of which shall be used in connection with the operation of the System. Lessee shall exercise reasonable care and reasonable consideration in entering upon the Cable Easement Area so as to not unreasonably interfere with the use and enjoyment of the Cable Easement Area by its owners and occupants. The Cable Easement granted herein shall bind Lessor and its successors under this Lease; provided, however, that, for the purpose of removing the facilities located in the Cable Easement Area, the term of the Cable Easement shall automatically terminate one hundred eighty (180) days after the date of termination of the Term of this Lease. Lessor shall keep the Cable Easement Area free of obstruction and shall not construct or place in or on the Cable Easement Area any landscaping, trees, bushes, buildings or other structures of any kind in a manner which may interfere with or damage the cables, conduits and related transmission.

**3.4 Utility Easements.** Lessor agrees to reasonably cooperate, at Lessee's sole cost and expense, in the granting of reasonably necessary easements to the applicable utility to install such utilities on, over and/or under and through the Premises as necessary for Lessee to operate and interconnect the System, provided, however, the location of such utilities shall be mutually agreed upon by the applicable utility, Lessor and Lessee. In all events, the easements shall include a provision that the easements shall automatically expire upon the date that is one hundred eighty (180) days after the date of expiration or earlier termination of the Lease.

#### **4. RIGHTS OF LESSEE.**

**4.1 Solar Resources.** Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations on, the Premises. Lessor shall not grant any rights in the Premises purporting to permit others to conduct Operations on the Premises in derogation of Lessee's sole and exclusive rights and privileges hereunder. Without the prior written consent of Lessee, Lessor shall not (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including without limitation any environmental regulation, land use ordinance, or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the System on the Premises or (ii) grant, confirm, acknowledge, recognize, or acquiesce in any right claimed by any other Person to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee in resisting and disputing such claims.

**4.2 Signage.** Lessee shall have the right to erect, modify, and maintain reasonable signage on the Premises with respect to the System and to Lessee's interests therein, subject to approval from Lessor.

**4.3 Enforcement of Legal Rights.** Lessee shall have the right to enforce Lessor's rights under applicable laws protecting solar energy systems from obstruction. Lessor shall cooperate with any efforts by Lessee to enforce such rights.

**4.4 Non-Interference.** In no event during the Term will Lessor construct, build or locate, or allow others (via the granting of easements, leases, subleases, licenses or other agreements) to construct, build, or locate any equipment or facilities (solar or otherwise) that would interfere with the System or otherwise engage in, or allow others to engage in activity, that might impede the System's access to the sun or decrease the output or efficiency of the System.

#### **5. DESIGN AND CONSTRUCTION OF SYSTEM.**

**5.1 Design and Construction.** Lessor hereby consents to the construction of the System in accordance with the plans and specifications set forth on the attached Exhibit C. Lessee shall cause its contractors to comply with Lessor's reasonable and customary safety requirements and to coordinate construction of the System with Lessor so as to reasonably minimize disruption to the Premises and to Lessor's normal operations and activities thereon. Lessee shall not release Hazardous Materials on the Premises. As used in this Lease, "Hazardous Materials" means any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic under any applicable law, and asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

**5.2 Permits and Approvals.** Lessee shall obtain all necessary local development permits and approvals to allow its use of the Premises under this Lease. Upon Lessee's request, Lessor shall reasonably assist and cooperate with Lessee to acquire and maintain approvals, permits, and authorizations or to facilitate Lessee's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including: providing any building owner or occupant authorizations; and signing and

processing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Lessor. Lessor shall also deliver to Lessee copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law to be in the name or physical control of Lessor. Lessee shall reimburse Lessor for reasonable and necessary third-party costs incurred by Lessor in relation to Lessor's assistance with such matters.

**5.3 Acknowledgment of Lessor for Roof Mounted Systems.** Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, including penetrations into the roof surface. Lessor agrees to review and approve any System load studies provided by Lessee, including those relating to the weight of the System and the integrity of the roof. Lessee shall be responsible for the repair of the roof of the Premises in the event that it becomes physically damaged as a result of Lessee's installation, operation, and/or maintenance or failure to maintain the System.

**5.4 Removal Upon Termination.** Upon the termination or expiration of this Lease for any reason, Lessee shall, within three hundred sixty-five (365) days after the date of expiration (or sooner if required by the PPA), remove the System from the Premises, and restore the Premises' rooftop to its condition as of the Effective Date, normal wear and tear excepted unless the System is purchased by Lessee. Removal of the System shall be at the cost of Lessee.

## **6. THE PREMISES.**

**6.1 Confirmation of Ownership.** At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as Lessee or Lessee's title company may require to confirm Lessor's ownership of the Premises or to complete or evidence the full granting of the leasehold interest in the Premises as intended by this Lease.

### **6.2 Liens.**

**6.2.1 Subordination.** Lessor shall cooperate with Lessee to obtain a Subordination, Non-Disturbance and Attornment Agreement (an "SNDA") from each lienholder which provides on terms reasonably acceptable to Lessee that the lien and rights of the lienholder shall be subordinate to this Lease. Lessor will also obtain any necessary consent and/or SNDA in favor of Lessee and on terms reasonably acceptable to Lessee from any and all entities having a possessory interest in the Premises.

**6.2.2 Notice to Premises Lienholders and Release.** Lessor shall give effective notice of Lessee's ownership of the System and the System's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (collectively, "Liens") upon the real property and fixtures that are part of the Premises. If there is any Lien against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessor shall obtain a disclaimer or release of such Lien. Lessor consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises, and any other filing by Lessee in a public office regarding its ownership of the System deemed necessary or appropriate

by Lessee, and Lessor hereby appoints Lessee as its agent with regarding to any such filing and authorizes Lessee to take required actions on Lessor's behalf required for such filing.

**6.2.3 System Liens.** Lessor shall not directly or indirectly allow any Lien on or with respect to the System by, through or under Lessor. If Lessor becomes aware of a Lien on the System by, through or under Lessor, Lessor shall promptly give Lessee written notice of such Lien and shall take such action as is necessary or appropriate to have such Lien discharged and removed. Lessor shall indemnify Lessee against all reasonable costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such Lien.

**6.2.4 Premises Liens.** Lessee shall not directly or indirectly allow any Lien by, through or under Lessee, on or with respect to the Premises or any interest therein, excluding Lessee's leasehold interest created pursuant to this Lease, or any other asset of Lessor, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the System by Lessee (including mechanics', labor or materialmen's liens) (collectively, "Permitted Liens"). Lessee shall defend and indemnify Lessor against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any non-Permitted Liens.

**6.3 Quiet Enjoyment.** Lessee shall enjoy quiet and peaceful use, enjoyment and possession of the Project Site, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, and neither Lessor nor any person claiming by, through or under Lessor shall disturb Lessee's quiet and peaceful use, enjoyment and possession of the Project Site.

**6.4 No Interference.** Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation activities that may adversely affect the System's exposure to sunlight. Except when necessary to address emergency situations, Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action that will interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Lease; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

**6.5 System Property of Lessee; Transfer of the Premises.** Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System and all equipment (including, but not limited to, photovoltaic modules or panels, inverters, battery storage equipment, meters, wire, data monitoring equipment, and cabling), components and moveable property of Lessee attached to or used in the operation of the System, that no portion or component of the System is a fixture, and that in the event that the Premises are sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered (a "Transfer"), such Transfer shall not attach to or affect the System, or Lessee's ownership rights to the System.

**6.6** Transfer of Premises. Lessor shall not Transfer all or any portion of the Premises unless the transferee agrees in writing that its interest in the Premises is subject and subordinate in all respects to the terms of this Lease, unless the transfer is ordered by a court with competent jurisdiction. Lessor shall give Lessee at least sixty (60) days' prior notice of any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer.

**6.7** Premises Security, Health and Safety. Lessor shall provide reasonable measures for the security of the Premises, including restricting access to the area on which the System is located and providing monitoring of the Premises' security alarms, if applicable. Lessor shall maintain the Premises in a structurally sound and safe condition consistent with all applicable Laws. If Lessor becomes aware of any circumstances relating to the System that creates an imminent risk of damage or injury to the System or any employee of Lessee, Lessor shall promptly notify Lessee.

**6.8** System Security. With Lessor's approval, not to be unreasonably withheld, Lessee may install all security measures that Lessee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, fences, barbed wire, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations.

**6.9** Maintenance of Premises. Lessor shall, without interfering with the operation of the System, maintain the Premises in good condition and repair, including the integrity of the roof, so that Lessee is able to comply with its obligations under this Lease. Lessor shall use commercially reasonable efforts to maintain Lessor's electrical energy equipment located on the Premises in good condition and repair so as to be able to receive and use the energy generated by the System. Lessor shall maintain its connection(s) and service contract(s) with its local utility, or any successors thereto, so that Lessor can, upon any suspension or interruption of delivery of energy from the System, provide the Premises with its full requirements for electricity.

**6.10** System Maintenance. During the Term, Lessee shall, at Lessee's sole cost, maintain the System, the Project Site and all areas of the Premises used by Lessee in the Operations, in accordance with applicable laws and prudent industry practices.

**6.11** Roof Maintenance. Lessor shall be solely responsible for, and bear all costs and expense relating to, maintaining the roof of the buildings on which the System is located, including all required repair (including leak repair), remediation and maintenance of such roof, unless such repair, remediation and maintenance is required as a direct result of the negligent installation, maintenance, or repair of the System. Lessor shall consult with Lessee before performing any required roof repair, remediation and maintenance that may affect the System, and Lessee shall be permitted to witness any such repair, remediation and maintenance. In the event the System must be temporarily disconnected or removed in order for Lessor to perform roof repair, remediation or maintenance, Lessor shall consult with Lessee in advance of any such activity and Lessee shall disconnect and remove the System at Lessor's expense, and Lessor shall pay to pursuant to the PPA for any remaining period during which the System is disconnected. Lessor shall be responsible for maintaining and enforcing all warranties relating to the roof.

**6.12 Reserved.**

**6.13 Clean Condition.** Lessee shall not unreasonably clutter the Project Site or the Premises and shall collect and dispose of any and all of Lessee's refuse and trash.

**6.14 Taxes.** Lessor shall pay when due all real property taxes and assessments possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, imposed or levied against the Premises or the System by any governmental body or public authority.

**6.15 Incentives.** The Parties further agree that all Incentives (as defined in the PPA) shall be allocated as set forth in the PPA and shall not attach to or be deemed a part of, or fixture to, the Premises.

**6.16 Pre-Existing Site Conditions.** Lessor will compensate Lessee for any reasonable and necessary out-of-pocket expenses incurred by Lessee to remedy, correct, amend, upgrade, or perform any work related to pre-existing conditions on the Premises and Project Site that were not reasonably discoverable or foreseen by Lessee through its initial site information review, investigation, and engineering site audit, including, but not limited to, repair of pre-existing construction defects (including in the roofing or electrical system on the Premises and Project Site), repair of damage to underground utilities not identified by the utility, and any additional costs resulting from government and/or utility inspectors who determine that pre-existing conditions require correction or amendment, unless such corrections or amendments are specifically provided for in this Lease.

**7. REPRESENTATIONS AND WARRANTIES**

**7.1 Representations of Lessor.** Lessor represents and warrants to Lessee that:

7.1.1 Lessor has the requisite corporate, partnership, limited liability company, or legal capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessor;

7.1.2 this Lease constitutes Lessor's legal, valid and binding obligation enforceable against it 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;

7.1.3 no suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against Lessor that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessor to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessor;

7.1.4 Lessor owns the Premises in fee simple, subject to no liens or encumbrances except as set forth in Exhibit B. All persons or entities having any ownership or possessory interest in the Premises are signing this Lease;

7.1.5 there are no Hazardous Materials on or under the Premises; and

7.1.6 no governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Lease by Lessor or the performance by Lessor of its obligations hereunder which Lessor will be unable to obtain in due course; and

7.1.7 Lessor acknowledges that it has inspected the rooftop, that Lessor warrants the condition thereof and its suitability for Lessee's use, and that, except as may be expressly provided to the contrary in this Lease, Lessor shall make any alterations, improvements, or repairs in and to the rooftop to make same ready for Lessee's use and occupancy.

**7.2** Representations of Lessee. Lessee represents and warrants to Lessor that:

7.2.1 Lessee has the requisite corporate, partnership or limited liability company capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessee;

7.2.2 this Lease constitutes Lessee's legal, valid and binding obligation enforceable against it 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;

7.2.3 no suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against Lessee that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessee to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessee; and

7.2.4 no governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Lease by Lessee or the performance by Lessee of its obligations hereunder which Lessee will be unable to obtain in due course.

## **8. DEFAULT; REMEDIES.**

**8.1** Lessee Default. Each of the following events shall constitute a "Lessee Default":

8.1.1 Lessee materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessor's notice of such breach, Lessee has failed to cure the breach within such thirty (30) day period, or (ii) if Lessee has diligently

commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessee has failed to cure the breach within a further ninety (90) day period (such aggregate period not to exceed one hundred twenty (120) days from the date of Lessor's notice); or

8.1.2 (i) Lessee commences a voluntary case under any bankruptcy law; (ii) Lessee fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessee in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessee remains undismissed or undischarged for a period of sixty (60) days.

**8.2 Lessor's Remedies.** If a Lessee Default has occurred and is continuing, Lessor may terminate this Lease by written notice to Lessee following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity.

**8.3 Lessor Defaults.** The following events shall be defaults with respect to Lessor (each, a "Lessor Default"):

8.3.1 Lessor materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessee's notice of such breach, Lessor has failed to cure the breach within such thirty (30) day period, or (ii) if Lessor has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessor has failed to cure the breach within a further ninety (90) day period (such aggregate period not to exceed one hundred twenty (120) days from the date of Lessee's notice);

8.3.2 (i) Lessor commences a voluntary case under any bankruptcy law; (ii) Lessor fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessor in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessor remains undismissed or undischarged for a period of sixty (60) days; or

8.3.3 Lessor defaults under the PPA resulting in a termination thereunder.

**8.4 Lessee's Remedies.** If a Lessor Default has occurred and is continuing, Lessee may terminate this Lease by written notice to Lessor following the expiration of the applicable cure period. Lessee may also exercise any other remedy it may have at law or equity, including recovering from Lessor all resulting damages, which damages shall include, but not be limited to, the lost income and lost Incentives damages and all other amounts of any nature relating to this Lease.

## **9. LIMITATIONS.**

**9.1 Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY

OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS LEASE. THE FOREGOING NOTWITHSTANDING, THE LOST INCOME AND LOSS OF INCENTIVES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

**9.2** Equitable Relief. The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Lease, and that, accordingly, in the event of any such breach or threatened breach, either Party shall be entitled to immediately seek any and all remedies available to it at law or in equity, including but not limited to an injunction or specific performance, from a court of competent jurisdiction.

## **10. FINANCING ACCOMMODATIONS.**

**10.1** Lessor Acknowledgment. Lessor acknowledges that Lessee may finance the System and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Lease and a security interest in the System to a financial institution, leasing company, or lender providing funds or extending credit to Lessee or its affiliates (a "Financing Party"). In order to facilitate such financing, and with respect to each Financing Party, Lessor agrees as follows:

**10.1.1** Consent to Collateral Assignment. Lessee shall have the right to assign this Lease as collateral for financing or refinancing of the System, and Lessor hereby consents to the collateral assignment by Lessee to any Financing Party of Lessee's right, title, and interest in and to this Lease.

**10.1.2** Financing Party's Rights Following Default. Notwithstanding any contrary term of this Lease:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Lease in accordance with the terms of this Lease. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Lease and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Lease and to perform any other act, duty, or obligation required of Lessee hereunder or cause to be cured any default or event of default of Lessee in the time and manner provided by the terms of this Lease. Nothing herein requires Financing Party to cure any default of Lessee (unless Financing Party has succeeded to Lessee's interests) to perform any act, duty, or obligation of Lessee, but Lessor hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Lessee to Financing Party, Financing

Party shall give notice to Lessor of the transferee or assignee of this Lease. Any such exercise of remedies shall not constitute a Lessee Default.

(d) Upon any rejection or other termination of this Lease pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Lessor shall enter into a new site lease agreement with Financing Party or its assignee on substantially the same terms as this Lease.

**10.1.3 Financing Party Cure Rights.** Lessor shall not exercise any right to terminate or suspend this Lease unless Lessor has given prior written notice to each Financing Party of which Lessor has notice. Lessor's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party has the longer of thirty (30) days and the cure period allowed for a default of that type under this Lease to cure the condition; 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. Lessor's and Lessee's obligations under this Lease shall otherwise remain in effect, and Lessor and Lessee shall be required to fully perform all of their respective obligations under this Lease during any cure period.

**10.1.4 Continuation Following Cure.** If Financing Party or its assignee acquires title to or control of Lessee's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 10.1.3, then this Lease shall continue in full force and effect.

**10.2 Notice of Defaults and Events of Default.** Lessor agrees to deliver to each Financing Party a copy of all notices that Lessor delivers to Lessee pursuant to this Lease.

## **11. NOTICES.**

**11.1 Notices.** Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Lessee:                   111 Mission Street  
Santa Cruz, CA 95060  
Attention: Corrina Hansen  
Phone: (408) 426-5420

To Lessor:                   168 W. Alisal St.  
Third Floor  
Salinas, CA 93923  
Attention: Sustainability Program

Phone: (831) 755-5115

## **12. GOVERNING LAW; DISPUTES.**

**12.1 Choice of Law.** This Lease shall be construed in accordance with the laws of the State of California, without regard to the conflict of laws principles thereof.

### **12.2 Disputes.**

**12.2.1 Management Negotiations.** The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within fifteen (15) days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within thirty (30) days of their first meeting, either Party may pursue any remedy available to it in accordance with Section 12.2.2.

**12.2.2 Venue.** Any controversy or dispute not amicably resolved by the Parties or through management negotiations shall be brought exclusively in the state or federal courts serving Monterey County, California. Each Party agrees to the laying of such venue and agrees not to later object to such venue as being an inappropriate or inconvenient forum.

## **13. INDEMNIFICATION.**

**13.1 Lessee's General Indemnity.** Lessee shall indemnify, defend, and hold harmless Lessor (including Lessor's permitted successors and assigns) and Lessor's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Lessor Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Lessor Indemnified Parties arising from or relating to (i) Lessee's breach of this Lease, or (ii) the negligence or willful misconduct of Lessee's invitees. Lessee's indemnification obligations under this Section 13.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessor Indemnified Party.

**13.2 Lessee's Environmental Indemnity.** If there is a PPA in place between the Lessor and Lessee and such PPA addresses environmental indemnities, then such PPA shall govern. If there is no such PPA, then this section shall apply. Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

**13.3 Lessor's General Indemnity.** Lessor shall indemnify, defend, and hold harmless Lessee (including Lessee's permitted successors and assigns) and Lessee's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Lessee Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including lost income from loss of Incentives and reasonable attorneys' fees if applicable, incurred

by Lessee Indemnified Parties arising from or relating to (i) Lessor's breach of this Lease, (ii) the negligence or willful misconduct of Lessor, Lessor's tenants, or Lessor's invitees, or (iii) the failure of building or roof to support, in whole or in part, the System as installed, including changes in roof surface incline. Lessor's indemnification obligations under this Section 13.3 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessee Indemnified Party.

**13.4 Lessor's Environmental Indemnity.** . If there is a PPA in place between the Lessor and Lessee and such PPA addresses environmental indemnities, then such PPA shall govern. If there is no such PPA, then this section shall apply. Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties for, from, and against, any claims, costs, damages, fees, or penalties, including lost income and and loss of Incentives, arising from the presence of any Hazardous Materials on or under the Premises, except to the extent that such presence is attributable to a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

## **14. INSURANCE.**

**14.1 Insurance Required.** Each Party shall maintain in full force and effect throughout the Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit D (except that if the PPA requires more insurance from either Party, then the insurance provisions in the PPA shall govern). Each policy of insurance maintained by Lessor shall (a) name Lessee as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Lessee. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

**14.2** Reserved.

**14.3 No Waiver of Obligations.** The provisions of this Lease shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

## **15. MISCELLANEOUS.**

**15.1 Assignments.** Neither Party shall have the right to assign any of its rights, duties, or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Lessee may assign any of its rights, duties, or obligations under this Lease, without the consent of Lessor, (i) to any

of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

**15.2 Entire Agreement.** This Lease represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

**15.3 Amendments.** This Lease may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Lessee and Lessor.

**15.4 No Partnership or Joint Venture.** Lessee and Lessee's agents, in the performance of this Lease, shall act in an independent capacity and not as officers or employees or agents of Lessor. This Lease shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Lease).

**15.5 Headings; Exhibits.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Any Exhibits referenced within and attached to this Lease, including any attachments to the Exhibits, shall be a part of this Lease and are incorporated by reference herein.

**15.6 Remedies Cumulative; Attorneys' Fees.** No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Lease, the each Party shall pay for its attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

**15.7 Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

**15.8 Severability.** If any part, term, or provisions of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease and shall not render this Lease unenforceable as a whole. Instead, the part of the Lease found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

**15.9 Counterparts and Facsimile Signatures.** This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (".PDF") signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

**15.10 No Partnership or Sale.** Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller real property, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

**15.11 Brokers.** Lessor and Lessee each represent and warrant that it has not dealt with any broker in connection with this Lease and each Party agrees to hold the other Party harmless from and against all claims, costs and expenses, including a reasonable attorneys' fees, arising from claims of any broker, finder or other intermediary hereto alleging to have dealt with or acted on behalf of such Party in connection with this transaction and Lease.

**15.12 Waiver of Jury Trial.** EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM BY THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**15.13 Further Assurances.** Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the System to the extent required for the requesting Party to carry out the purposes of this Lease or fulfill any legal obligation or regulatory reporting requirements.

**15.14 Memorandum of Lease.** Lessor and Lessee agree to execute and record a memorandum of this Lease. Lessor shall execute, with notarization, and deliver to Lessee together with the its initial delivery of the signed Lease a recordable Memorandum of Lease substantially in the form attached hereto as Exhibit E ("Memorandum of Lease"), which shall include the Exhibit A description of the Premises and which Lessee shall then record in the Official Records of the County in which the Project Site is located. Lessee shall be responsible for the cost of recordation.

**15.15 Estoppel Certificate.** From time to time, upon written request by Lessee, Lessor shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Lessor, of Lessee's compliance with the terms of this Lease, or detailing any known issues of noncompliance.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties have caused this Rooftop System Site Lease Agreement to be duly executed and delivered as of the Effective Date.

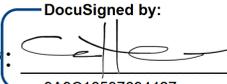
**LESSOR:**

**LESSEE:**

**COUNTY OF MONTEREY**

**MONTEREY SOLAR 1 LLC**

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

DocuSigned by:  
By:   
Name: Mynt Systems Inc. , it's sole member  
Title: Corrina Hansen CFO

**EXHIBIT A**

**PREMISES; PROJECT SITE**

**Legal Description of Premises, APN 177-181-024-000**

**PARCEL I:**

PARCEL A, IN THE CITY OF SALINAS, COUNTY OF MONTEREY, STATE OF CALIFORNIA, AS SHOWN ON THAT MAP FILED FEBRUARY 14, 1989 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY IN VOLUME 17 OF PARCEL MAPS AT PAGE 164.

**PARCEL II:**

CERTAIN REAL PROPERTY SITUATE IN THE RANCHO LLANO DE BUENA VISTA, CITY OF SALINAS, MONTEREY COUNTY, CALIFORNIA, BEING A PORTION OF EDEN STREET AND PARCEL "A" AS SHOWN ON MAP OF TRACT NO. 896, EDEN INDUSTRIAL PARK, RECORDED IN VOLUME 14 OF CITIES AND TOWNS AT PAGE 31, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF EDEN STREET, A 64 FOOT WIDE CITY STREET, SAID POINT BEING ALSO ON THE WESTERLY LINE OF CALIFORNIA STATE HIGHWAY ROUTE US 101, AT A FOUND CONCRETE MONUMENT AS SHOWN ON SAID MAP; THENCE ALONG SAID LINE

1) SOUTH 24° 47' 38" EAST, 905.00 FEET TO THE MOST NORTHERLY CORNER OF PARCEL A AS SHOWN ON SAID MAP; THENCE LEAVE SAID HIGHWAY LINE AND CONTINUE ALONG SAID STREET LINE, TANGENTIALLY

2) CURVING TO THE RIGHT ON A CIRCULAR ARC OF 139 FOOT RADIUS THROUGH AN ANGLE OF 22° 59' 56" FOR A DISTANCE OF 55.80 FEET; THENCE LEAVE SAID STREET LINE

3) CURVING TO THE LEFT ON A CIRCULAR ARC OF 55 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS SOUTH 28° 15' 06" WEST) THROUGH AN ANGLE OF 71° 59' 20" FOR A DISTANCE OF 69.10 FEET TO A POINT ON THE WESTERLY LINE OF SAID STREET; THENCE ALONG SAID WESTERLY LINE

4) CURVING TO THE LEFT ON A CIRCULAR ARC OF 75 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS NORTH 86° 40' 14" WEST) THROUGH AN ANGLE OF 28° 07' 24" FOR A DISTANCE OF 36.81 FEET; THENCE TANGENTIALLY

5) NORTH 24° 47' 38" WEST, 905.00 FEET; THENCE TANGENTIALLY

6) CURVING TO THE LEFT ON A CIRCULAR ARC OF 100 FOOT RADIUS THROUGH AN ANGLE OF 39° 20' 30" FOR A DISTANCE OF 68.66 FEET; THENCE LEAVE SAID WESTERLY LINE

7) CURVING TO THE LEFT ON A CIRCULAR ARC OF 55 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS NORTH 70° 06' 18" WEST) THROUGH AN ANGLE OF 114° 09' 11" FOR A DISTANCE OF 109.58 FEET TO A POINT ON THE EASTERLY LINE OF SAID STREET; THENCE ALONG SAID LINE

8) CURVING TO THE RIGHT ON A CIRCULAR ARC OF 164 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS SOUTH 4° 15' 29" EAST) THROUGH AN ANGLE OF 69° 27' 51" FOR A DISTANCE OF 198.83 FEET TO THE POINT OF BEGINNING.

**PARCEL III:**

CERTAIN REAL PROPERTY SITUATE IN THE RANCHO LLANO DE BUENA VISTA, CITY OF SALINAS, MONTEREY COUNTY, CALIFORNIA, BEING A PORTION OF EDEN STREET AND PARCEL "A" AS SHOWN ON MAP OF TRACT NO. 896, EDEN INDUSTRIAL PARK, RECORDED IN VOLUME 14 OF CITIES AND TOWNS AT PAGE 31, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL "A" AS SHOWN ON SAID MAP; THENCE ALONG THE EASTERLY BOUNDARY THEREOF AND THE WESTERLY LINE OF CALIFORNIA STATE HIGHWAY ROUTE US 101

1) SOUTH 24° 47' 38" EAST, 87.37 FEET TO A POINT; THENCE LEAVE SAID BOUNDARY AND HIGHWAY LINE,

2) CURVING TO THE LEFT ON A CIRCULAR ARC OF 55 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS SOUTH 65° 12' 22" WEST) THROUGH AN ANGLE OF 36° 57' 16" FOR A DISTANCE OF 35.47 FEET TO A POINT ON THE EASTERLY LINE OF EDEN STREET; THENCE ALONG SAID LINE

3) CURVING TO THE LEFT ON A CIRCULAR ARC OF 139 FOOT RADIUS (THE CENTER OF THE CIRCLE OF WHICH SAID ARC IS A PART BEARS SOUTH 88° 12' 18" WEST) THROUGH AN ANGLE OF 22° 59' 56" FOR A DISTANCE OF 55.30 FEET TO THE POINT BEGINNING.

**Project Site:**

1441 Schilling Place Salinas, CA 93901
<b>Site and Facility Descriptions</b>

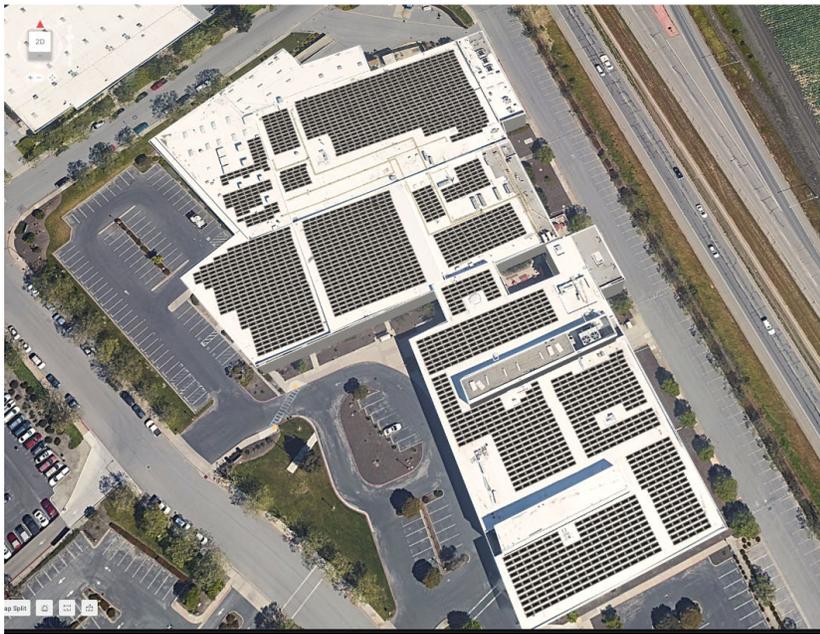
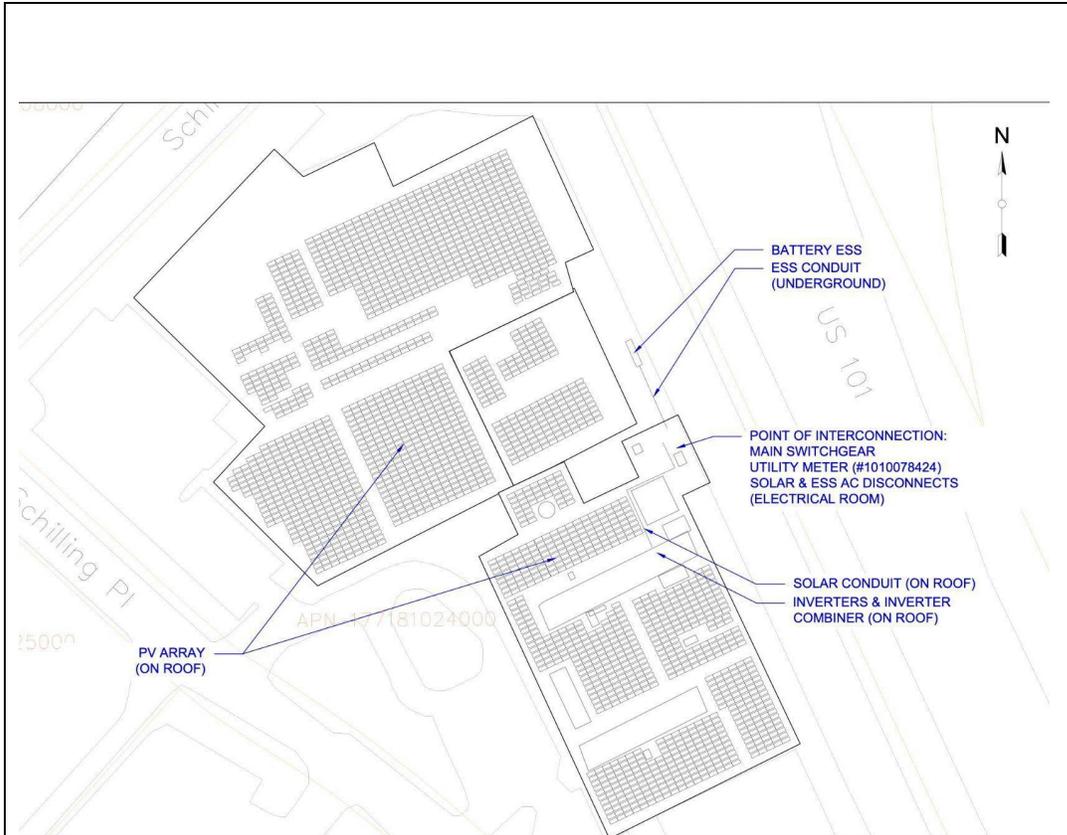


Exhibit A



**EXHIBIT B**

**ENCUMBRANCES ON LESSOR'S TITLE**

## EXHIBIT C

### SYSTEM DESCRIPTION

1. **System Location:** 1441 Schilling Place Salinas, CA 93901
2. **Estimated System Size (DC kW):** 1,083 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

PV System including modules and inverters

Battery Energy Storage System including batteries and inverters.

4. **Host Utility:** PG&E (“Utility”)
5. **Expected Energy Storage Capacity (kWh):** 609 kW/2436 kWh\*

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

6. **Delivery Point and Premises:** See Exhibit A to this Lease which 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
  - 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 D**

**INSURANCE REQUIREMENTS**

(a) Lessee shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessor shall be named as an additional insured under this liability insurance, provided however that Lessee shall in no event be obligated to repair or replace Lessor's buildings or Premises; and

(ii) Lessee may satisfy the insurance requirements contained in this Lease though any combination of primary and/or excess coverage.

(b) Lessor shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessee shall be named as an additional insured under this liability insurance;

(ii) All-risk property insurance with coverage equal to the replacement value of the Premises; and

(iii) Lessor may satisfy the insurance requirements contained in this Lease though any combination of self-insurance, primary and/or excess coverage.

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (“**Agreement**”) is entered into June 13, 2023 (“**Effective Date**”) by and between Monterey Solar 1 LLC (“**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 June 13, 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 (viii) 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.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of the 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 forty-eight (48) 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 forty-eight (48) 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. 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).
- g. **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 (7<sup>th</sup>) Contract Year, the first day of the ninth (9<sup>th</sup>) Contract Year, the first day of the eleventh (11<sup>th</sup>) Contract Year, the first day of the sixteenth (16<sup>th</sup>) Contract Year, or the first day of the twentieth (20<sup>th</sup>) 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**

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

DocuSigned by:  
**MONTEREY SOLAR 1 LLC**

By: \_\_\_\_\_  
Name: ~~Mynt Systems Inc.~~ **Mynt Systems Inc.**, it's sole member  
Title: ~~Corrina Hansen~~ **Corrina Hansen** CFO  
Date: **6/2/2023**

DocuSigned by:  
By: \_\_\_\_\_  
Name: ~~Mynt Systems~~ **Mynt Systems**, it's sole member,  
Title: ~~Derek Hansen~~ **Derek Hansen** CEO  
Date: **6/2/2023**

**Exhibit 1****Basic Terms and Conditions**

1. **Initial Term:** Twenty-five (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:**

<b>Contract Year</b>	<b>Output (\$/kWh)</b>
1	\$0.18500
2	\$0.18870
3	\$0.19247
4	\$0.19632
5	\$0.20025
6	\$0.20425
7	\$0.20834
8	\$0.21251
9	\$0.21676
10	\$0.22109
11	\$0.22109
12	\$0.22109
13	\$0.22109
14	\$0.22109
15	\$0.22109
16	\$0.22109
17	\$0.22109
18	\$0.22109
19	\$0.22109
20	\$0.22109
21	\$0.22109
22	\$0.22109
23	\$0.22109
24	\$0.22109
25	\$0.22109

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	\$7,964,440.79
2	\$7,019,807.47
3	\$6,254,433.49
4	\$5,543,711.21
5	\$4,846,807.15
6	\$4,146,104.76
7	\$4,008,097.93
8	\$3,921,258.50
9	\$3,823,511.57
10	\$3,714,122.03
11	\$3,592,309.57
12	\$3,476,975.15
13	\$3,357,864.06
14	\$3,230,325.17
15	\$3,098,296.92
16	\$2,961,520.48
17	\$2,819,722.05
18	\$2,672,611.93
19	\$2,519,883.57
20	\$2,361,212.60
21	\$2,196,255.78
22	\$2,024,649.82
23	\$1,846,010.26
24	\$1,659,930.15
25	\$1,465,978.77

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	1,705,725	1,535,153

2	1,693,785	1,524,406
3	1,681,928	1,513,736
4	1,670,155	1,503,139
5	1,658,464	1,492,617
6	1,646,855	1,482,169
7	1,635,327	1,471,794
8	1,623,879	1,461,491
9	1,612,512	1,451,261
10	1,601,225	1,441,102
11	1,590,016	1,431,014
12	1,578,886	1,420,997
13	1,567,834	1,411,050
14	1,556,859	1,401,173
15	1,545,961	1,391,365
16	1,535,139	1,381,625
17	1,524,393	1,371,954
18	1,513,722	1,362,350
19	1,503,126	1,352,814
20	1,492,604	1,343,344
21	1,482,156	1,333,941
22	1,471,781	1,324,603
23	1,461,479	1,315,331
24	1,451,248	1,306,123
25	1,441,090	1,296,981

\* 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:** 1441 Schilling Place Salinas, CA 93901
2. **System Size (DC kW):** 1,083 kW (DC)\*
3. **System Description (Ground mount, rooftop, car port, etc.):** Rooftop

PV System:

Modules: Boviet BVM6612M9(S)-HC or Tier 1 Equivalent  
Inverters: SolarEdge SE66.6KUS / SE100KUS 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):** 609 kW/2436 kWh\*

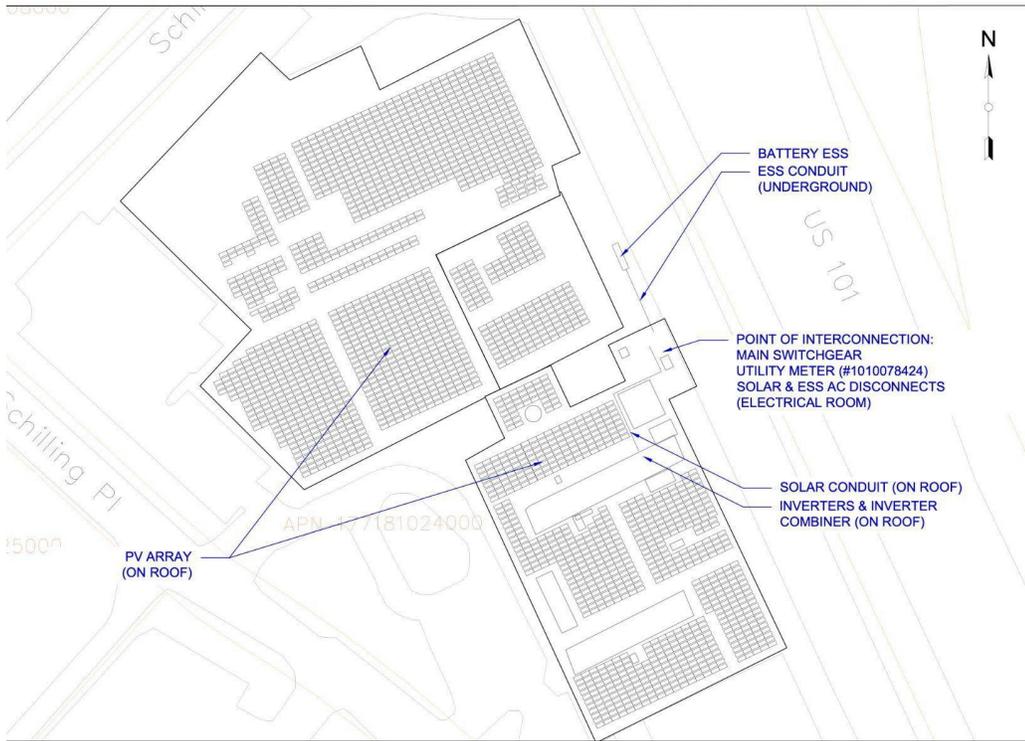
\* These are estimates (and not a guarantee) of the system size

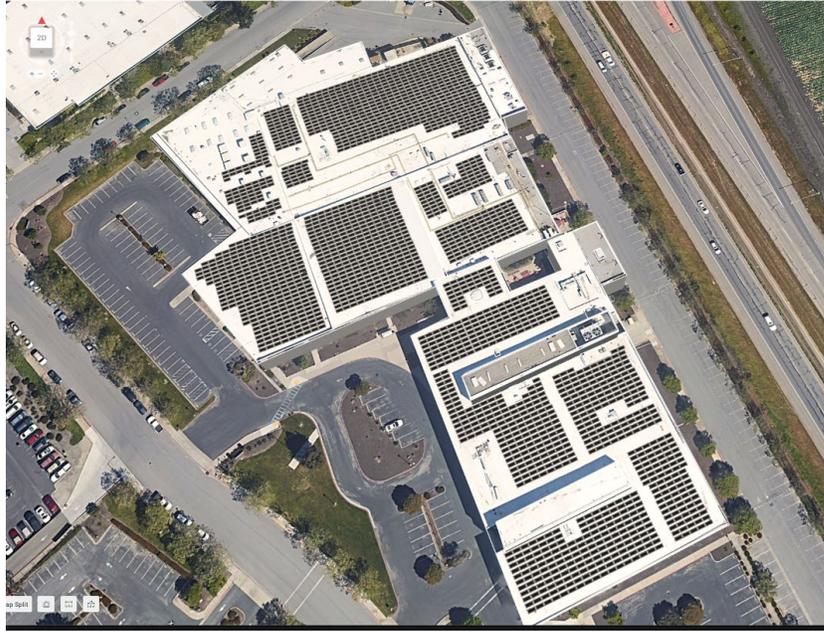
6. **Delivery Point and Premises:** Schedule A to this Exhibit 2 contains one or more drawings or images depicting:
  - a. Premises, including the Improvements (as applicable);
  - b. Proposed System location;
  - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
  - 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**

1441 Schilling Place Salinas, CA 93901

**Site and Facility Descriptions**





**Exhibit 3**  
**Copy of Roof Warranty**

# Warranties



## LETTER OF WARRANTY

Date: June 27, 2016

Project:

Job Order #: JF02-14-05-J8862-00

Job Order Title: Schilling Place Tenant Improvement – ReRoof

Contractor:

Sea Pac Engineering, Inc.

3325 Wilshire Blvd. Suite 305

Los Angeles, CA 90010-1719

Owner:

Monterey County

Facilities

168 W Alisal, 2nd Floor

Salinas, CA 93901

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Sea Pac Engineering, Inc., warrants all its work performed in connection with the above project to be in conformance with drawings and specifications and free from all defects in all facility components and systems for a period of **twelve month(s)** from this date June 10, 2016 of Final Acceptance and agrees to remedy all defects arising within that period at its own expense including the cost of repair or replacement of items damaged by such defects or damaged in the course of repairing such defects.

It is understood and agreed that in the event of defects and the necessity of making repairs, the Owner will immediately notify the above Contractor in writing of its conditions and shall give the Contractor reasonable time in which to make said repairs. If any person, firm, or corporation other than the above listed Contractor has, since the completion of the above work, performed or attempted to perform any repairs to the property then this warranty could become null and void. This warranty does not cover any repairs made by anyone other than the above Contractor or one of its authorized representatives.

The terms "defects" shall not be construed as embracing damage arising from misuse, negligence, Acts of God, normal wear and tear or failure to follow maintenance or operating instructions.

JOHN LEE will be the authorized representative of Sea Pac Engineering Inc., and will be the designated Warranty Manager for the duration of the warranty period.

A handwritten signature in blue ink, appearing to read 'John Lee', is written over a horizontal line.

John Lee / President  
Sea Pac Engineering, Inc.

**GUARANTEE CERTIFICATE**

**C.W ROOFING & Waterproofing, Inc.**  
27702 Crown Valley Pkwy Site D-4 #154,  
LOS ANGELES, CA 90006  
  
LICENSE 974117

We the undersigned, we hereby guarantee to the purchaser name in the contract of which this guarantee is a part that the roofing work completed by us on the building described in said contract on the date set forth therein is of the materials and workmanship described in the specifications agreed to and a part of such contract. We hereby guarantee to the purchaser to make, without cost or expense to the purchaser, any repairs to the roof of said building involved in such roof work that may become necessary to maintain it in a water tight condition for a period of 1 years from the date of completion for this guarantee to be effective, it shall be the duty of the purchaser, or agent, tenant or employee of such purchase, to report to us in writing within caused from defective materials or workmanship applied by us under our contract. In the event defects occur during such 1 years period due to defects in workmanship or materials applied by us, our guarantee and obligation shall be limited to necessary repair, and it is understood and agreed that we shall not be responsible to anyone for, and purchaser shall hold us harmless from and against any liability to anyone for, damaged to such building itself.

It is understood that this guarantee does not extend to: any damage to said roof from fire earthquake, extreme wind, hail, or distortions, warping, settlement of defects in the roof deck upon which the roof is applied or rests; or injury caused to said roof by other parties by their actions beyond our control; or to leaks from flashing or parapet walls unless applied or waterproofed by us. We are not responsible for leaks through skylight, air conditioning units, vent or other sheet metal installation unless applied by us. New roof requires maintenance, if the maintenance is not up to date after 3 years of the completion of the roof, the guarantee does not exist. This guarantee agreement from has been approved and adopted as standard by members of the roofing contractor Assoc. of California.

This guarantee is issued to Monterey County Completed by us on 6-10-2016  
And refers on to Fleceback TPO Address 1447 Schilling PL

City Salinas State California Zip 93905

Contractor: Daniel Suh 

**VERSICO TOTAL ROOFING SYSTEM WARRANTY**

VSW-1

Rev 01/15

**Versico, a division of Carlisle Construction Materials Incorporated (Versico)**, warrants to the Building Owner (**Owner**) of the building described below, that subject to the terms, conditions, and limitations stated in this warranty, Versico will repair any leak in the Versico Total Roofing System (**Versico Total Roofing System**) installed by a Versico Authorized Roofing Contractor for a period of **25** years commencing with the date of Versico's acceptance of the Versico Total Roofing System installation. However, in no event shall Versico's obligations extend beyond **25.5** years subsequent to the date of substantial completion of the Versico Total Roofing System. See below for exact date of warranty expiration.

The Versico Total Roofing System is defined as the following Versico brand Materials: Membrane, Flashings, Adhesives and Sealants, Insulation, Cover Boards, Fasteners, Fastener Plates, Fastening Bars, Metal Work, Insulation Adhesives, and any other Versico brand products utilized in this installation.

**TERMS, CONDITIONS, LIMITATIONS**

1. Owner shall provide Versico with written notice via letter, fax or email within thirty (30) days of the discovery of any leak in the Versico Total Roofing System. Owner should send written notice of a leak to Versico's Warranty Services Department at the address set forth at the bottom of this warranty. By so notifying Versico, the Owner authorizes Versico or its designee to investigate the cause of the leak. Should the investigation reveal the cause of the leak to be outside the scope of this Warranty, investigation and repair costs for this service shall be paid by the Owner.

2. If, upon inspection, Versico determines that the leak is caused by defects in the Versico Total Roofing System's materials, or workmanship of the Versico Authorized Roofing Contractor in installing the same, Owner's remedies and Versico's liability shall be limited to Versico's repair of the leak.

3. This Warranty shall not be applicable if, upon Versico's inspection, Versico determines that any of the following has occurred:

(a) The Versico Total Roofing System is damaged by natural disasters, including, but not limited to, lightning, fire, insect infestations, earthquake, tornado, hail, hurricanes, and winds of (3 second) peak gust speeds of fifty-five mph or higher measured at 10 meters above ground, or

(b) Loss of integrity of the building envelope and, or structure including, but not limited to partial or complete loss of roof decking, wall siding, windows, doors or other envelope components or from roof damage by wind-blown objects, or:

(c) The Versico Total Roofing System is damaged by any intentional or negligent acts, accidents, misuse, abuse, vandalism, civil disobedience, or the like.

(d) Deterioration or failure of building components, including, but not limited to, the roof substrate, walls, mortar, HVAC units, non-Versico brand metal work, etc., occurs and causes a leak, or otherwise damages the Versico Total Roofing System; or

(e) Acids, oils, harmful chemicals and the like come in contact with the Versico Total Roofing System and cause a leak, or otherwise damage the Versico Total Roofing System.

(f) The Versico Total Roofing System encounters leaks or is otherwise damaged by condensation resulting from any condition within the building that may generate moisture.

4. This Warranty shall be null and void if any of the following shall occur:

(a) If, after installation of the Versico Total Roofing System by a Versico Authorized Roofing Contractor, there are any alterations or repairs made on or through the roof or objects such as, but not limited to, structures, fixtures, solar panels, wind turbines, roof gardens or utilities are placed upon or attached to the roof without first obtaining written authorization from Versico; or

(b) Failure by the Owner to use reasonable care in maintaining the roof, said maintenance to include, but not be limited to, those items listed on Versico's Care & Maintenance Information sheet which accompanies this Warranty.

5. Only Versico brand insulation products are covered by this warranty. Versico specifically disclaims liability, under any theory of law, for damages sustained by or caused by non-Versico brand insulation products.

6. During the term of this Warranty, Versico shall have free access to the roof during regular business hours.

7. Versico shall have no obligation under this Warranty while any bills for installation, supplies, services, and warranty charges have not been paid in full to the Versico Authorized Roofing Contractor, Versico, or material suppliers.

8. Versico's failure at any time to enforce any of the terms or conditions stated herein shall not be construed to be a waiver of such provision.

9. Versico shall not be responsible for the cleanliness or discoloration of the Versico Total Roofing System caused by environmental conditions including, but not limited to, dirt, pollutants, or biological agents.

10. Versico shall have no liability under any theory of law for any claims, repairs, restoration, or other damages including, but not limited to, consequential or incidental damages relating, directly or indirectly, to the presence of any irritants, contaminants, vapors, fumes, molds, fungi, bacteria, spores, mycotoxins, or the like in the building or in the air, land, or water serving the building.

11. This warranty shall be transferable upon a change in ownership of the building when the owner has completed certain procedures including a transfer fee and an inspection of the Roofing System by a Versico representative.

**VERSICO DOES NOT WARRANT PRODUCTS UTILIZED IN THIS INSTALLATION WHICH IT HAS NOT FURNISHED; AND SPECIFICALLY DISCLAIMS LIABILITY, UNDER ANY THEORY OF LAW, ARISING OUT OF THE INSTALLATION AND PERFORMANCE OF, OR DAMAGES SUSTAINED BY OR CAUSED BY, PRODUCTS NOT FURNISHED BY VERSICO OR THE PRIOR EXISTING ROOFING MATERIAL OVER WHICH THE VERSICO ROOFING SYSTEM HAS BEEN INSTALLED**

**THE REMEDIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES FOR FAILURE OF THE VERSICO TOTAL ROOFING SYSTEM OR ITS COMPONENTS. THERE ARE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHICH EXTEND BEYOND THE FACE HEREOF. VERSICO SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGE TO THE BUILDING OR ITS CONTENTS UNDER ANY THEORY OF LAW.**

**OWNER: MONTEREY COUNTY FACILITIES**  
**BUILDING : SCHILLING PLACE TENANT IMPROVEMENT RE-ROOF**  
**1441 SCHILLING PLACE, SALINAS, CA**

**ROOFER: CW ROOFING & WATERPROOFING, INC.**  
**SUITE D-4 27702 CROWN VALLEY P, LADERA RANCH, CA 92694**

**DATE INSTALLATION COMPLETED : 06/08/2016**  
**DATE OF ACCEPTANCE BY VERSICO : 07/26/2016**  
**WARRANTY EXPIRATION DATE : 07/25/2041**

<b>WARRANTY NUMBER:</b>	<b>1185986</b>
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VERSICO, a division of Carlisle Construction Materials Incorporated

BY \_\_\_\_\_




P.O. Box 1289 Carlisle, PA 17013  
 (800) 992-7663 (717) 960-4035 FAX



# ROOFING SYSTEM WARRANTY

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**System Warranty Revisions & Alterations Procedure  
Care & Maintenance Instructions**

**Versico**  
PO Box 1289  
Carlisle, PA 17013  
Tel: **800.992.7663**  
Fax: 717.960.4036  
Web: **[www.versico.com](http://www.versico.com)**

## VERSICO ROOFING SYSTEMS

### Warranty Revisions & Alterations Procedures

Versico recommends periodic roof system evaluations to ensure the roofing system is performing as intended. We suggest regular maintenance inspections be conducted by a Versico Authorized Roofing Contractor or by someone specially trained in single-ply roofing installations. However, even with the most rigorous reviews, roofing systems can be damaged by flying debris, other trades servicing rooftop equipment, etc. Regardless of how the damage occurs, it is important to understand how to both protect your warranty investment and prolong the life of your roofing system. Following these procedures and recommendations can ensure that repairs are performed accurately so that the warranty duration and coverage remains intact.

### Warranty Revisions & Alterations Procedures

1. Paragraph 4(a) of the Versico Roofing System Warranty states: "This warranty shall be null and void if, after installation of the Versico Roofing System by a Versico Authorized Roofing Contractor, there are any alterations or repairs made on or through the roof or objects such as, but not limited to, structures, fixtures, or utilities placed upon or attached to the roof without first obtaining written authorization from Versico."
2. Any questions concerning revisions or alterations to your Versico Roofing System must be directed to Versico's Warranty Services Department. Versico must approve the proposed details prior to any revision or alteration.

Below is address information for Versico's Warranty Services and telephone and fax numbers for your convenience.

**Versico**

Attn. Warranty Services

P.O. Box 1289, Carlisle, PA 17013

**Phone: 800.992.7663 Fax: 717.960.4035**

3. The approval process begins when Versico receives a shop drawing that outlines those locations where the alteration will take place. Either the Versico Authorized Roofing Contractor or the building owner must also notify Versico of the proposed alterations in writing and identify the project name, location, warranty number and the CMD or AB number originally assigned by Versico.
4. A Versico Authorized Roofing Contractor must perform all revision work. It is recommended that the original contractor who installed the roofing system perform the revision work, if possible.
5. The Versico Authorized Roofing Contractor must notify Versico in writing when the revision work is complete.
6. At Versico's discretion, a Versico Field Service Representative may conduct an inspection to ensure compliance with the current published Versico Specifications and Details. The contractor will be notified of the results. Current inspection charges and expenses will apply.
7. When the revision or alteration is completed in compliance with the above procedures, Versico will notify the building owner that the warranty is being continued.

## VERSICO ROOFING SYSTEMS

### Care & Maintenance Instructions

The following maintenance items are the responsibility of the building owner and are not included within the scope of the Roofing System Warranty.

MAINTENANCE ITEM	ACTION
Drainage	Keep the roof surface clean at drain areas to avoid clogging. Check that ponding water is drained from the roof within 48 hours following rain.
Petroleum Products	Keep all petroleum products (solvents, greases, oils, or any liquids containing petroleum products) off the membrane to avoid degradation.
Animal Fats – EPDM Membranes	Do not exhaust kitchen wastes (vegetable oils) or other animal fats directly onto the roof surface. If incidental contact is likely, contact Versico for recommendations on membrane type and usage.
Animal Fats – TPO & PVC Membranes	TPO and PVC membranes for restaurant rooftop use will not void the warranty. A rooftop maintenance program must be in place to ensure that accumulations of animal fats/grease are regularly removed and the rooftop surface is cleaned with a mixture of warm soap and water and/or by other approved cleaning methods. See Versico's Installation Guide for specific cleaning instructions.
Chemicals	Contact Versico if any chemicals come in contact with the roofing membrane. Some chemicals could degrade the membrane or cause swelling.
Foot Traffic	Walkways must be provided if regular traffic is required or if rooftop equipment has a regular thirty (30) day or less maintenance schedule. Exercise caution when not walking on walkways, especially on white membranes (VersiGard white or VersiWeld) as ice or frost build-up may not be visible. All membranes are slippery when wet.
Roof Alterations	Please refer to the Versico Roofing System Revisions and Alteration procedures on the preceding page.
Cleaning	Handprints, footprints, general traffic grime, industrial pollutants and environmental dirt may be cleaned from the surface of the membrane by scrubbing with detergent and water, then rinsing with clean water. To maximize reflectivity, white membrane(s) should be cleaned once every two years.
Metal Work	Keep roof maintenance items such as counterflashing, metal curbs and metal ducts sealed watertight at all times.

*Continued on next page.*

## VERSICO ROOFING SYSTEMS

### Care & Maintenance Instructions *(continued)*

MAINTENANCE ITEM	ACTION
Leaks	<p>Locate the leak and determine if it is a roof membrane leak or a wall, curb, skylight, metal ductwork or plumbing leak. Deterioration or failure of building components that causes a leak is not covered by the warranty. A water leak may be indicated by soft or warped insulation.</p> <p>Physical damage to the membrane or flashing is not covered by the warranty.</p> <p>Please notify Versico's Warranty Services Department at 800.992.7663 if the leak is determined to be membrane related. The building owner must pay the investigation and repair cost if the problem is found to be outside the scope of the warranty.</p>
Temporary Repairs	<p>Use Lap Sealant or any good-grade rubber caulk to make temporary repairs. <b>Notify Versico of this action in writing.</b></p>
Hysunite and Acrylic Coatings	<p>Coatings are maintenance items and are excluded from the Versico warranty. Recoat when necessary.</p>
Roof Cement	<p><b>DO NOT USE ROOF CEMENT</b> to repair or install rubber membrane. Roof cement contains petroleum products that may degrade the membrane.</p>
Rooftop Maintenance	<p>When it is necessary for workers to be on the roof to service rooftop equipment (e.g. HVAC units, antennas, etc.) workers should be cautioned to use walkways and exercise care with their tools and equipment to avoid puncturing the roofing membrane.</p>

The preceding care and maintenance requirements are for VersiGard EPDM (black and white), VersiWeld, VersiFlex and VersiFleece Membrane Roofing Systems. The list is not meant to be exhaustive and is for illustrative purposes only. Versico recommends that your maintenance staff and/or maintenance contractor inspect the roof periodically or at least twice a year. The inspection should concentrate on high-risk areas such as roof hatches, drains and around all rooftop equipment as well as general inspection of the entire roof. The inspector should be looking for membrane damage (cuts and tears), oil or Freon leaks, chemical spills, and water infiltration into the roofing system.

Compliance with the above-listed care and maintenance requirements will aid in ensuring a durable, watertight membrane roofing system.



A SINGLE SOURCE FOR SINGLE-PLY ROOFING

**Versico**, PO Box 1289, Carlisle, PA 17013  
Tel: **800.992.7663** Fax: 717.960.4036 Web: **www.versico.com**