



Solar Power Purchase & Battery Energy Storage Services Agreement

This Solar Power Purchase & Battery Energy Storage Services Agreement (this “**Agreement**”) is entered by and between the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Execution Date**”).

Purchaser:	<i>East Bay Community Energy Authority</i>	Seller: ¹	
Name and Address:	<i>East Bay Community Energy Authority 1999 Harrison, Suite 800</i>	Name and Address:	
Phone:		Phone:	() ___ - ___
Fax:		Fax:	() ___ - ___
E-mail:		E-mail:	
Additional Purchaser Information:		Additional Seller Information:	<i>[e.g., Contractor’s License Number]</i>

This Agreement sets forth the terms and conditions of the purchase and sale of the Product from the Portfolio, as defined herein. The Projects comprising the Portfolio are installed on the real property comprising Purchaser’s Project Sites described or depicted in **Exhibit 2-B** of the applicable Addendum, and including any buildings and other improvements on the Project Sites other than the Projects (the “**Improvements**”).

The Parties will execute an Addendum substantially in the form attached hereto as **Schedule B** for each City Portfolio (each an “**Addendum**”). Once executed by both Parties, each Addendum will be a unique agreement that automatically incorporates by reference the applicable terms of this Agreement and stands alone with respect to all other Addenda. If there is a conflict between the terms of this Agreement and the terms of an Addendum, the terms of the Addendum will control unless the Addendum states that a specific provision of the Addendum will be superseded by a specific provision of this Agreement. For the avoidance of doubt, each City Portfolio shall be governed by the terms of its own Addendum. In the event of an underperformance or default with respect to a single City Portfolio, such underperformance or default shall not be considered to implicate or in any way effect any other City Portfolio or the continued performance obligations of Purchaser and Seller, respectively, with respect to all other City Portfolios or Projects thereunder as provided under the terms of this Agreement and all relevant Addenda.

Product:

- PV Energy
- Discharging Energy
- Storage Capacity

¹ **NTD:** Please provide all Seller-specific contact information.

Equipment: All “equipment” referenced under this Agreement shall meet the requirements of “Tier 1” (as defined under the General Terms and Conditions).

The Storage Addendum is _____ is not _____ being included.²

The Security Addendum is _____ is not _____ being included³

Guaranteed Capacity of Generating Projects:

City 1 Portfolio: __ kW
City 2 Portfolio: __ kW
City 3 Portfolio: __kW
City 4 Portfolio: __ kW
TOTAL: __ kW

Guaranteed Capacity of Storage Projects: __kW

City 1 Portfolio: __ kW
City 2 City Portfolio: __ kW
City 3 City Portfolio: __kW
City 4 City Portfolio: __ kW
TOTAL: __ kW

Storage Contract Capacity: __kW (*post-COD calculation)

City 1 Portfolio: __ kW
City 2 City Portfolio: __ kW
City 3 City Portfolio: __kW
City 4 City Portfolio: __ kW
TOTAL: __ kW

The documents listed below are incorporated by reference and made part of this Agreement.

General Terms and Conditions (including Defined Terms under **Schedule A**)
Schedule B – Form of Addendum (including the exhibits listed below)

Exhibit 1 Pricing
Exhibit 2-A City Portfolio Project Descriptions

² **NTD:** Please select.

³ **NTD:** Please select. ⁴ **NTD:** Parties to discuss which documents should be included.

<u>Exhibit 2-B</u>	Project Delivery Points and Project Sites
<u>Exhibit 3</u>	Performance Guarantee
<u>Exhibit 4</u>	Storage Addendum
<u>Exhibit 5</u>	Insurance Requirements
<u>Exhibit 6</u>	Security Addendum
<u>Exhibit 7</u>	Reserved
<u>Exhibit 8</u>	City Specific Terms
<u>Exhibit 9</u>	Form of Annual Load Modifying Resource Dispatch Plan
<u>Exhibit 10</u>	Reserved

[Signature Page to Cover Sheet Follows]

Purchaser: East Bay Community Energy Authority

Signature: _____

Printed Name: Nick Chaset

Title: _____

Date: _____

Seller:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

General Terms and Conditions: Table of Contents

	Page
1. Purchase and Sale of the Product.....	1
2. Term and Termination.....	1
3. Pricing, Billing and Payment; Taxes; Credit.....	2
4. Guaranteed Delivery Obligations; Information Sharing.....	3
5. Incentives; Optimization Savings; Investment Tax Credits.....	4
6. Project Completion.....	5
7. Force Majeure; Budgetary Non-Appropriation Event.....	6
8. Seller’s General Obligations Regarding the Projects.....	7
9. Miscellaneous Rights and Obligations of the Parties.....	8
10. Relocation of a Project.....	12
11. Removal of Project upon Termination or Expiration; Removal Fund.....	12
12. Measurement; Meter.....	13
13. Defaults, Remedies, and Damages.....	13
14. Representations and Warranties.....	16
15. Insurance.....	17
16. Ownership.....	18
17. Indemnification and Limitations of Liability.....	18
18. Change in Law.....	20
19. Load Modification.....	20
20. Assignment and Financing.....	21
21. Confidentiality.....	22
22. General Provisions.....	23

General Terms and Conditions

Purchase and Sale of the Product.

This Agreement governs the relationship between Purchaser and Seller, as detailed under Section 1.b. Purchaser and Seller acknowledge and agree that following the execution of this Agreement, Purchaser shall enter into four different power purchase agreements with four different cities, under the terms of which the Purchaser shall be the “seller” entity and the City shall be the “purchaser” entity and which shall be in form and substance similar to this Agreement (each a “**City Agreement**” and together, the “**City Agreements**”). Purchaser shall serve as the intermediary between this Agreement and the City Agreements, whereby each City shall be the ultimate off-taker, and the Seller shall provide the underlying Project output and other performance obligations as set forth under the terms of this Agreement, all Addenda, and the City Agreement.

Subject to the terms and conditions of this Agreement and each Addendum, during the Term, Seller shall supply and deliver to Purchaser all of the Product produced by or associated with each Project, and Purchaser shall purchase all Product produced by or associated with each Project at the applicable Contract Price and in accordance with Exhibit 1 of the applicable Addendum. The Project Energy generated by or stored at each Project shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the Project Energy passes to Purchaser from Seller at the Delivery Point. Purchaser has no obligation to purchase from Seller any Product for which the associated Project Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Project or a Force Majeure Event affecting Purchaser’s ability to receive the Product at the Delivery Point.

Term and Termination.

Effective Date; Term. This Agreement shall be effective when it has been executed and delivered by both Parties and when at least one of the City Agreements has been executed and delivered, respectively, by Purchaser and a City (the date after the Execution Date on which all at least one City Agreement has been executed and delivered shall be the “**Effective Date**”) and shall end upon the expiration of the final City Term (“**Term**”); *provided* that prior to the Effective Date those rights and obligations hereunder expressly arising upon the Execution Date (including Sections 2.a and 21, and the defined terms in Schedule A used in the foregoing Sections) shall be effective as of the Execution Date. With respect to each City, this Agreement shall be effective as of the applicable City Effective Date, and shall end upon the expiration of all Project Terms for each Project contemplated under the applicable City Agreement (the “**City Term**”). With respect to each Project, the Product supply period commences on the Commercial Operation Date of the Project and continues for, depending on the Project, either twenty (20) or twenty-five (25) years (the “**Initial Term**” and together with the Renewal Term, the “**Project Term**”), unless terminated earlier pursuant to the provisions of this Agreement. After the Initial Term of each Project, the Purchaser may request to renew this Agreement as it applies to such Project for one additional five-year term (the “**Renewal Term**”) by written request to the Seller at least 120 days prior to the expiration of the Initial Term, provided that there shall be no Renewal Term without the written consent of Seller in its sole discretion. The Parties shall confer and agree on the revised Contract Price, Termination Payment, and Expected Annual Contract Quantity set forth under Exhibit 1 of the applicable Addendum for the Renewal Term. If Seller consents to renewal, it shall provide written notice of consent to the renewal within 30 days of the date of the request by Purchaser. If consent by Seller is not provided within such 30-day period, the Project Term shall expire as of the last day of the applicable Initial Term. No later than 60 days after Seller provides consent to the Renewal Term, which consent shall state the mutually agreed upon Contract Price, Termination Payment, and Expected Annual Contract Quantity set forth under Exhibit 1 of the applicable Addendum for such Renewal Term, Purchaser shall confirm to Seller in writing of its intent to proceed with its option for a Renewal Term. Documentation of any such Renewal Term and changes to Contract Price, Termination Payment, and Expected Annual Contract Quantity set forth under Exhibit 1 of the applicable Addendum shall be in the form of a subsequent Addendum. All timelines for action pursuant to this Section 2.a may be extended at the Parties’ mutual written agreement.

Termination Due to Contract Price Adjustments or Lack of Project Viability. If, at any time after the Effective Date and prior to the Commencement of Installation of any Project, (i) Seller determines that the installation of such Project will not be technically, legally or economically viable for any reason, and (ii) the Parties, despite having negotiated a Contract

Price adjustment in good faith, have not reached agreement on such price within thirty (30) days following written notice from Seller, either Party may terminate the applicable Project 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 the Commencement of Installation of a Project, the Contract Price of such Project shall not be subject to further adjustment pursuant to **Exhibit 1** of the applicable Addendum or otherwise, except as otherwise provided under this Agreement.

Termination by Purchaser for Delay. If Commencement of Installation has not occurred with respect to any Project within 365 days of the applicable City Effective Date, Purchaser may, in its sole discretion, terminate the applicable Project by providing twenty (20) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this **Section 2.c** if Seller achieves Commencement of Installation with respect to such Project on or before the end of such 20-day notice period. Purchaser shall not be liable for any damages in connection with such termination.

Pricing, Billing and Payment; Taxes; Credit.

Pricing and Sale. With respect to each Project, during the Term, Seller grants, pledges, assigns, and otherwise commits and shall deliver exclusively to Purchaser, Project Energy, which must be exclusively from the Project, pursuant to the terms and conditions contained herein.

Project Energy. Commencing on the Commercial Operation Date of the applicable Project and continuing throughout the Project Term, subject to this **Section 3**, Seller shall sell and deliver at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, and pay for, the Project output as follows:

Project Energy Pricing: The pricing for Project Energy delivered at the Delivery Point shall be calculated for each City Portfolio, using the applicable Contract Price for each City for the current Contract Year. The invoice for Project Energy delivered by the Seller for the applicable monthly billing period shall be determined as follows:

MP = Monthly Payment to Seller for Project Energy supplied to Purchaser over the billing period.

$$MP = (EE\text{-}City\ 1 * EP\text{-}City\ 1) + (EE\text{-}City\ 3 * EP\text{-}City\ 3) + (EE\text{-}City\ 2 * EP\text{-}City\ 2) + \\ (EE\text{-}City\ 4 * EP\text{-}City\ 4)$$

EE-[City] = the total kWh of delivered Energy to Purchaser by Seller during the billing period for the portion of the Project in the applicable City.

EP-[City] = the Contract Price for the applicable City as per **Exhibit 1** of the applicable Addendum.

Monthly Invoices. Seller shall invoice Purchaser on a monthly basis, the delivery of which shall be no later than thirty (30) Business Days following the previous month's end. Failure to send such invoice within seventy-five (75) Business Days of the applicable month's end shall relieve the Purchaser of any liability for payment of the Product for such month. Such monthly invoices shall provide (i) the records of data from the Meter of (a) PV Energy and Discharging Energy produced by the applicable Projects and delivered to the Delivery Point and (b) Storage Capacity, (ii) the Contract Price, and (iii) the total amount due from Purchaser.

Payment Terms. All amounts due under this Agreement are due and payable net 45 days following receipt of an invoice. Any undisputed portion of the invoice amount not paid within such 45-day period shall accrue interest at the annual rate of 5% (but not to exceed the maximum rate permitted by Law). All payments shall be made in U.S. dollars.

Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement for withholding payment associated with such invoice, and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall

accrue at a rate of 5% per annum on such amount in dispute from the date becoming past due under such invoice until the date paid.

Taxes.

Purchaser's Taxes. Purchaser is responsible for (1) payment or reimbursement of Seller for all taxes assessed on the generation, sale, delivery or consumption of Energy sold under this Agreement and capacity provided by each Project or the interconnection of each Project to the utility's electricity distribution system, and (2) real property taxes for the property where each Project is located. If Purchaser is required by law or regulation to remit or pay taxes that are Seller's responsibility hereunder, within 60 days following written notice from Purchaser of the taxes paid and applicable amounts, Seller shall reimburse Purchaser for the amount of any such paid taxes. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under Law.

Seller's Taxes. Seller is responsible for: (1) income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity or capacity under this Agreement and (2) personal property taxes imposed on each Project.

Guaranteed Delivery Obligations; Information Sharing.

Beginning on the Commercial Operation Date for each Project, such Project shall produce not less than 85% of the applicable Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) during the Initial Term measured on a two-year, cumulative basis (each such two-year period, a "**Measurement Period**"), unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity is due to (a) Project failure, damage or downtime attributable to third parties, (b) general utility outages or any failure of any electric grid, (c) a Force Majeure Event or (d) acts or omissions of Purchaser in violation of any of its obligations hereunder (such adjusted amount to the Expected Annual Contract Quantity, the "**Guaranteed Delivered Energy**"). Subject to the terms and conditions of this Agreement, beginning on the second anniversary of the applicable Commercial Operation Date, if the actual output of such Project for the two-year period prior to such anniversary (the "**Actual System Output**") does not equal or exceed the Guaranteed Delivered Energy for such two-year period, Seller will credit Purchaser on its next invoice an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for commercially available Local Electric Utility-provided energy during such two-year period *minus* the applicable Solar Generation Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such two-year period and the Guaranteed Delivered Energy for such two-year period.

Beginning on the third anniversary of the Commercial Operation Date for each Project, in the event that such Project's Actual System Output is less than 85% but equal to or greater than 75% of the Guaranteed Delivered Energy during a Measurement Period (after accounting for weather-related and seasonal changes) (the "**Underperformance Range**"), Seller shall pay Purchaser Daily Underperformance Damages on account of such underperformance. Daily Underperformance Damages shall be payable for each day following the end of the initial Measurement Period in which the Actual System Output falls within the Underperformance Range for such two-year period; provided that in no event shall Seller be obligated to pay aggregate Daily Underperformance Damages under this Agreement in excess of ten thousand dollars (\$10,000) (the "**Daily Underperformance Damages Cap**"). On or before the 15th day of each month, Purchaser shall invoice Seller for Daily Underperformance Damages, if any, accrued during the prior month and, within seven Business Days following Seller's receipt of such invoice, Seller shall pay Purchaser the amount of the Daily Underperformance Damages set forth in such invoice. The Parties agree that Purchaser's receipt of Daily Underperformance Damages shall be Purchaser's sole and exclusive remedy for Seller's unexcused delivery of Actual System Output within the Underperformance Range.

Notwithstanding the provisions of Section 4.b, beginning on the third anniversary of the Commercial Operation Date for each Project, in the event that such Project's Actual System Output is less than 75% but equal to or greater than 50% of the Guaranteed Delivered Energy during a Measurement Period (after accounting for weather-related and seasoning changes) (the "**Significant Underperformance Range**"), Seller shall pay Purchaser Daily Significant Underperformance Damages on account of such underperformance. Daily Significant Underperformance Damages shall be payable for each day following the end of the initial Measurement Period in which the Actual System Output falls within the Significant

Underperformance Range for such two-year period; provided that in no event shall Seller be obligated to pay aggregate Daily Significant Underperformance Damages under this Agreement in excess of twelve thousand dollars (\$12,000) (the “**Daily Significant Underperformance Damages Cap**”). On or before the 15th day of each month, Purchaser shall invoice Seller for Daily Significant Underperformance Damages, if any, accrued during the prior month and, within seven Business Days following Seller’s receipt of such invoice, Seller shall pay Purchaser the amount of the Daily Significant Underperformance Damages set forth in such invoice. The Parties agree that Purchaser’s receipt of Daily Significant Underperformance Damages shall be Purchaser’s sole and exclusive remedy for Seller’s unexcused delivery of Actual System Output within the Significant Underperformance Range.

Information Sharing and Shared Learning. Seller understands and acknowledges that Purchaser is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Purchaser’s portfolio of assets to meet the Cities’ needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Purchaser, including meter data and hourly charging and discharging data at least on an aggregated basis but excluding cost or similar proprietary information, upon Purchaser’s request, with such information to be treated by Purchaser as Confidential Information. Seller shall provide such applicable meter data to Purchaser in a format and to a platform specified by Purchaser that is reasonably acceptable to Seller.

Incentives; Optimization Savings; Investment Tax Credits.

Upon purchasing the Product pursuant to this Agreement, Purchaser is entitled to the benefit of and will retain all ownership interests in the RECs and Incentives associated with such Product. Seller shall cooperate with Purchaser in obtaining, securing, and transferring any and all RECs and Incentives to the Purchaser. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Seller shall not make any filings or statements inconsistent with Purchaser’s ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to Seller, Seller shall promptly pay or deliver such items or amounts to Purchaser. Purchaser shall have the unrestricted right to obtain and utilize Ancillary Services and Capacity Attributes. Notwithstanding the foregoing, Seller shall be the owner and is entitled to the benefit of all Tax Credits. “**Tax Credits**” shall mean any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the Portfolio.

Seller shall provide Optimization Savings with the Product. “**Optimization Savings**” means the savings realized on Purchaser’s utility bill(s) directly attributable to the use of the Portfolio and shall include, but not be limited to, savings that are realized from demand charge management, energy arbitrage, load shaping, and coincident peak or installed capacity tag mitigation. For the avoidance of doubt, any Purchaser savings resulting from a rate or tariff switch enabled by the presence and/or operation of the Projects shall be considered Optimization Savings. Seller shall provide Optimization Savings in a commercially reasonable manner, but Seller shall have discretion over the manner in which Optimization Savings are provided.

Investment Tax Credits; ITC Qualification. In designing and constructing the Projects, Seller shall use best efforts to ensure each Project satisfies all requirements necessary to obtain (i) an ITC in an amount equal to at least 30% of qualified costs (the “**30% ITC**”), and (ii) an ITC adder of 10% of qualified costs for satisfaction of the Domestic Content Requirements (the “**Domestic Content Adder**”, and together with the 30% ITC, the “**40% ITC**”).

ITC Filing. As soon as reasonably practicable after each City Effective Date, but no later than thirty (30) days after the end of the calendar year following the applicable City Effective Date, Seller shall (i) file a valid and completed application to obtain the 40% ITC for the applicable City Portfolio with the IRS, and (ii) deliver to Purchaser a report setting forth evidence

of its ITC filing to the IRS for the applicable City Portfolio (the “**ITC Filing Report**”). The ITC Filing Report shall include the following documents: [____]⁴.

Project Completion.

Project Development. With respect to each Project, Seller shall diligently pursue the development and installation of the Project, subject to Section 2.b, Section 13, and the remaining provisions of this Section 6. The Parties agree that time is of the essence in connection with the completion of the Project.

Permits and Approvals. With respect to each Project, Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):

any permits and approvals, including related to zoning, land use, and building, required for Seller to construct, install, operate, and maintain the Project;

any agreements and approvals from the utility necessary in order to interconnect the Project to the utility’s electric distribution system; and

any permits or other authorizations required by Law, the CAISO Tariff, the tariffs of the Local Electric Utility or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by this Agreement.

Cooperation. 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.

Commissioning Tests. Seller shall comply with all applicable CAISO and Local Electric Utility requirements for pre-operational testing. In addition, no later than three (3) Business Days prior to conducting a pre-operational test in connection with Commercial Operation of the applicable Project (a “**Commissioning Test**”), Seller shall notify Purchaser of the date on which it intends to conduct such Commissioning Tests. Purchaser has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such Commissioning Tests. Seller may change the date for such Commissioning Tests upon written notice to Purchaser, provided that Purchaser has at least five Business Days’ notice of the date of such Commissioning Tests.

Obligation to Interconnect. With respect to each Project, Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Local Electric Utility as needed to enable Seller to transmit Energy to the Delivery Points. Purchaser shall not be responsible for any costs under the Interconnection Agreement or any other agreements between Seller and the Local Electric Utility, including but not limited to the costs of any upgrades to the Transmission System associated with the interconnection of the Project. In no event shall Purchaser be required to maintain the interconnection facilities including metering facilities or for the cost and expense associated therewith.

WREGIS. As applicable, prior to the Commercial Operation Date of each Project, Seller shall register such Project in the WREGIS and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Project are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Purchaser as applicable. In the event that WREGIS is not in operation as of the Commercial Operation Date of the applicable Project, Seller shall perform its obligations, as required under this Section 6.f promptly after WREGIS is in operation.

⁴ **NTD:** Parties to discuss which documents should be included.

Commencement of Installation. With respect to each Project, a Licensed Professional Engineer shall provide Seller with all requisite information required for the proper production of the Product and functioning of the Project.

Guaranteed Commercial Operation Date. Seller shall achieve Commercial Operation for each Project by the applicable Guaranteed Commercial Operation Date. If Seller does not achieve Commercial Operation for a Project by the applicable Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Seller for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date for such Project. The Parties agree that Purchaser's receipt of Commercial Operation Delay Damages shall be Purchaser's sole and exclusive remedy for the first ninety (90) days of delay in achieving the Commercial Operation Date after the Guaranteed Commercial Operation Date for such Project.

Commercial Operation. Seller shall notify Purchaser in writing when Seller has achieved Commercial Operation for a Project (the date of such notice, the "**Commercial Operation Date**" for such Project). Seller shall provide Purchaser with documentation to evidence that such Project is ready to begin Commercial Operation upon Purchaser's reasonable request.

Force Majeure; Budgetary Non-Appropriation Event.

Force Majeure Event. If either Party reasonably 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 and without the fault or negligence of the Party relying thereon as justification for such delay, 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 excuse from performance shall only apply to Projects that are affected by the Force Majeure Event; provided, further, that such affected 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. With respect to each Project, if the Force Majeure Event occurs during the applicable Project Term and impacts the ability of any Project to deliver electricity to the Delivery Point or to provide capacity, as applicable, such Project Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.

Termination Due To Force Majeure. If a Force Majeure Event notified by Seller under Section 7.a continues for a consecutive period of ninety (90) days or more within a 12-month period, then either Party may terminate any Projects impacted by the Force Majeure Event without either Party having further liability under this Agreement except: (1) liabilities accrued prior to termination, (2) Seller shall remove the Project as required under Section 11 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser, after which Purchaser elects to terminate the Agreement) and (3) if Purchaser elects to terminate any Project in accordance with this Section 7.b, Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of any affected Project or other actions by Seller and, prior to expiration of the initial 90-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate such Project so long as Seller continues to diligently pursue such actions.

Extension of Time by Reason of Force Majeure. With respect to each Project, if Seller is delayed in achieving the applicable Commencement of Installation or the Expected Commercial Operation Date due to a Force Majeure Event, the time for achievement of the Commencement of Installation or the Expected Commercial Operation Date will be automatically extended for such affected Project to account for the impact of the delay.

Budgetary Non-Appropriation Event. Notwithstanding anything to the contrary, due to the constitutional limitations levied on cities, the City may be unable to appropriate funds for the procurement of any utility services for a particular fiscal year (a "**Budgetary Non-Appropriation Event**"). During a Budgetary Non-Appropriation Event, if Purchaser does not otherwise have other funds available to make payments otherwise due under this Agreement, Purchaser is not obligated to pay for (and the Seller shall not be required to deliver) the Product or any services provided under this Agreement until such Budgetary Non-Appropriation Event has terminated. If a Budgetary Non-Appropriation Event continues for more than 180 days, Purchaser may terminate this Agreement, and if such Budgetary Non-Appropriation Event continues for more than

360 days, Seller may terminate this Agreement. Termination under this Section shall apply on a per-Project basis, based on Projects that are affected by any such Budgetary Non-Appropriation Event.

Seller's General Obligations Regarding the Projects. Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate, and maintain each Project, in each case in a good and workmanlike manner and in accordance with applicable Law and Prudent Operating Practice in the state in which the applicable Project Site is located. Each Project shall comply with all applicable rules, regulations, and local building codes.

Project Design Approval. With respect to each Project, Seller shall provide Purchaser with a copy of the Project design and construction timeline (the "**Project Design**") for commercially reasonable approval at least 60 days prior to scheduled commencement of construction of such Project. Purchaser shall have 60 days after receipt to approve or disapprove the Project Design in writing. If Purchaser disapproves of the Project Design, it shall identify the commercially reasonable bases, including, but not limited to operational issues at the applicable Project Site. Seller shall modify the Project Design to address Purchaser's objections (such modified design, the "**Modified Project Design**") and resubmit to Purchaser for approval within 30 days. After receipt of a Modified Project Design, Purchaser shall approve or disapprove it in writing within 15 days. If Purchaser disapproves a Modified Project Design or if the Project design or construction timeline modifications requested by Purchaser render such Project commercially non-viable, Seller may terminate the applicable Project in accordance with Section 2.b. Seller shall provide Purchaser with an as-build plan set of such Project after project completion. Seller shall provide Purchaser with quarterly updates during construction, which shall include any updates to the construction timeline. If the Project design modifications requested by Purchaser render the Project non-viable, Seller may terminate the applicable Project under Section 2.b above.

EPC Contractor. Seller shall enter into one or more EPC Contracts for the design and construction of the Portfolio. The EPC Contractor for such EPC Contracts shall be [___], or any other contractor satisfactory to Purchaser in its sole discretion.

Project Repair and Maintenance. Seller may suspend delivery of electricity from a Project to the Delivery Point for the purpose of maintaining and repairing such Project; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser and (ii) limit any such suspension of service to weekend or off-peak hours. 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. Seller will provide to Purchaser written schedules for scheduled maintenance for each City Portfolio (each a "**Planned Outage**") for each Contract Year no later than 45 days prior to the first day of the applicable Contract Year. Purchaser may provide comments no later than 15 days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Purchaser the final updated schedule of Planned Outages no later than seven days after receiving Purchaser's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages; provided however, such Planned Outages shall not exceed five (5) days within a Contract Year. Notwithstanding the foregoing, Seller shall be permitted to reduce deliveries of Product during a (i) Forced Project Outage or (ii) a Force Majeure Event, as the result of either of which, Seller shall provide Purchaser written notice of such event, including the anticipated duration (if known).

Notice of Hazardous Substances. If any product being offered, delivered or supplied to the Purchaser or at any Project Site in connection with this Agreement is listed in the Hazardous Substances list of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Seller shall include a Material Safety Data Sheet ("**MSDS**") with delivery or shipment to the applicable Project Site. Each MSDS shall include the contract/purchase order number and identify the "Ship To Address." Seller shall ensure all shipments and containers comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the Hazardous Substance, name and address of the manufacturer, and the appropriate hazard warning regarding potential physical safety and health hazards.

Maintenance, Audit and Inspection of Records.

Maintenance of Records. Seller shall maintain any and all documents and records that demonstrate performance under this Agreement and any lease or license relating to each Project, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Purchaser for a minimum period of five years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.

Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Purchaser, at any time during regular business hours, upon written request by a designated representative of Purchaser. Seller shall provide copies of such documents to Purchaser for inspection at a time and place that is convenient to Purchaser.

Miscellaneous Rights and Obligations of the Parties.

Access Rights. With respect to each Project, Purchaser hereby grants, subject to the terms of this Section 9.a, to Seller and to Seller's agents, employees, contractors, and Permitted Seller Assignees, Purchaser's interest in a (i) non-exclusive, sub-licensable licenses running with each applicable Project Site (each, a "**Non-Exclusive License**") for access to, on, over, under, and across each Project Site from the City Effective Date until the date that is 180 days following the date of expiration of the applicable City Term or earlier termination of the applicable City Portfolio or this Agreement (the "**License Term**"), 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 (including, without limitation, the right to use additional space within the building as reasonably necessary for the installation, interconnection, operation, and maintenance of lessee's utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary equipment and appurtenances running between each Project and the applicable Delivery Point). Seller and its employees, agents, and contractors must provide proper notice to Purchaser and comply with Purchaser's site safety and security requirements, as set forth in Exhibit 8 of the applicable Addendum, when on each Project Site during the applicable License Term. Seller and its employees, agents, and contractors shall provide reasonable advance notice prior to entry which shall be, at minimum, no less than 20 days, to Purchaser or his or her designee of Seller's intent to exercise the access rights set forth in this Section 9.a; provided, however, in the event of a Forced Project Outage, Force Majeure Event or other emergency, or if access is required in connection with a Purchaser-Requested Outage pursuant to Section 9.h, Seller shall provide as much reasonable advanced notice as is practicable under the circumstances prior to such entry. During the License Term, Purchaser shall preserve and protect Seller's rights under the Non-Exclusive License and Seller's access to each Project Site and shall not interfere or permit any third parties under Purchaser's control to interfere with such rights or access. Notwithstanding anything to the contrary contained herein, Seller shall have the right to assign or sublicense any Non-Exclusive License to any Financing Party. Seller or its designee (including any Financing Party) shall have the right, upon proper notice and subject to the terms of this Section 9.a and Exhibit 8 of the applicable Addendum, without cost to access the applicable Project Site in order to perform its obligations under this Agreement. Purchaser will not charge rent for such right to access any Project Site. The Financing Parties have a first priority perfected security interest in the applicable Project. The Financing Parties are intended third party beneficiaries of Purchaser's agreements in the applicable Non-Exclusive License. Upon any rejection or earlier termination of the Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within 90 days of such termination or rejection, Purchaser shall execute a new grant of license rights in favor of the Financing Parties (or their designees) on substantially the same terms as the applicable Non-Exclusive License. Purchaser will not take any action inconsistent with the foregoing.

The rights granted to Seller herein shall include, without limitation, the following rights for the duration of the applicable City Term: (i) to use of Purchaser's water already available and accessible to any Project Site solely for cleaning a Project in a manner that is not wasteful, including an automatic shut-off nozzle (it being understood and agreed that Seller's right to such water is non-exclusive in that Purchaser and other third parties may also access such water); (ii) to connect to and use the electrical systems and internet located upon the applicable Project Site during the installation and construction of a Project; (iii) after consultation with and consent from Purchaser on method, timing, and specific vegetation to be impacted and upon issuance of any permit as required by state or local law, to remove, trim, prune, top or otherwise

control the growth of any tree, shrub, plant or other vegetation; and (iv) after consultation with and consent from Purchaser on method, timing, and specific objects to be impacted and upon issuance of any permit as required by state or local law, remove any object on the applicable Project Site that obstructs, interferes with or impairs a Project or operations. Purchaser grants a non-exclusive temporary license to Seller over, across, and upon portions of the real property owned by Purchaser that lie outside of the Project Sites for these limited purposes.

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.

[Intentionally Omitted.]

Transmission and Distribution Maintenance Information. If either Party receives information through the ISO or from the Local Electric Utility regarding maintenance that will have a material adverse effect on a Project, it will provide the information promptly to the other Party.

Coordination with the ISO, Local Electric Utility and WECC. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO and Local Electric Utility; (ii) WECC scheduling practices; and (iii) Prudent Operating Practices.

Maintenance of Project Sites. Purchaser shall cause each City, at the City's sole cost and expense, to maintain the applicable Project Sites and Improvements located in such City in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall cause each City to ensure that each applicable Project Site remain interconnected to the local utility grid at all times and (ii) shall cause each City to not permit cessation of electric service to any applicable Project from the local utility. Purchaser shall cause each City to (i) accept full responsibility for and (ii) properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of such City's equipment that utilizes any applicable Project's outputs. Purchaser shall cause each City to use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser. Purchaser shall have no obligation whatsoever to make or pay the cost of any alterations, improvements or repairs to the applicable Project Sites and Improvements, including, without limitation, any improvement or repair required to comply with any law. Each City shall be solely responsible for performance of any repairs required to be performed by such City under the terms of the applicable City Agreement.

No Alteration of Project Sites. Upon receipt of notice from a City of its intention to make any alterations or repairs to any Project Site (except for emergency repairs) or any Improvement that may adversely affect the operation and maintenance of any applicable Project, pursuant to Section [8(g)] of the applicable City Agreement, Purchaser shall inform Seller in writing within 30 days of such proposed alterations or repairs. Upon receipt of written notice of Seller's reasonable request that the City use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with Seller's reasonable request, Purchaser shall notify the City of such request within ten days. If any repair, alteration or Improvement results in a permanent and material adverse economic impact on any applicable Project, Purchaser may request relocation of such Project under Section 10 hereof. To the extent that temporary disconnection or removal of the Project is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the Project, at Purchaser's cost. Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable Law. Notwithstanding anything contained herein to the contrary, with respect to work, services, repairs, restoration, insurance, indemnities, representations, warranties or the performance of any other obligation of each City under the applicable City Agreement, the sole obligation of Purchaser shall be to request the same in writing from the applicable City as and when requested to do so by Seller, and to use Purchaser's reasonable efforts (without requiring Purchaser to spend more than a nominal sum) to obtain such City's performance.

Purchaser-Requested Outages. Upon Purchaser's written request, Seller shall take any Project off-line for a total of five days during each Contract Year (each event a "**Purchaser-Requested Outage**" and the five-day period the "**Outage Allowance**"). The Outage Allowance includes all Purchaser-Requested Outage hours undertaken by Seller for maintenance

or repairs for which Purchaser is responsible pursuant to Section 9.f or requested by Purchaser under this Section 9.h (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least three days in advance. Purchaser is not obligated to accept or pay for electricity from the applicable Project for Purchaser-Requested Outages up to the annual Outage Allowance. If Purchaser's aggregate hours for Purchaser-Requested Outages exceed the Outage Allowance in a given Contract Year, other than a Force Majeure Event, Seller shall reasonably estimate the amount of electricity, based on the daily average derived from consumption of Project Energy from the consecutive three weeks immediately preceding the latest Purchaser-Requested Outage, that would have been delivered to Purchaser during such excess Purchaser-Requested Outages, and Purchaser shall pay Seller for such amount in accordance with this Agreement.

Use of Equipment. Seller shall maintain and use its equipment in a safe and workmanlike manner at all times. Seller shall not conduct or permit activities on, in or about any Project Sites or Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting a Project. Seller shall indemnify Purchaser for any loss or damage to any Project to the extent caused by or arising out of (i) Seller's breach of its obligations under this Section 9.i or (ii) the acts or omissions of Seller or its employees, agents, invitees or separate contractors following Seller's failure to cure those actions contemplated under (i) or (ii) within 45 Business Days' receipt of Purchaser's notice, which shall be provided no later than within five days of Purchaser becoming aware of such breach, act or omission.

Insolation. Purchaser acknowledges that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall cause each City to agree not to cause or permit any interference with each Generating Project's Insolation and Purchaser shall cause each City to, to the extent within such City's reasonable control, ensure that vegetation on each Project Site adjacent to each Generating Project is regularly pruned or otherwise maintained to prevent interference with the Generating Project's Insolation. Purchaser will cause each City to deliver a shade report from SunEye (or a comparable entity) within three Business Days before the Commercial Operation Date of each Project. If the Insolation of a Project decreases during the applicable Project Term due to new obstructions or vegetation, the Guaranteed Delivered Energy for such Project shall be reduced in proportion to the decrease in Insolation. If Purchaser discovers or is notified by a City of any activity or condition that could diminish the Insolation of any Generating Project, Purchaser shall immediately notify Seller and cooperate with Seller in causing the City to preserve and restore the Generating Project's Insolation levels as they existed on the Effective Date and as allowed by state and local law and within the reasonable control of the Purchaser.

Use and Payment of Contractors and Subcontractors. Seller may use contractors and subcontractors, licensed and in good standing, to perform its obligations under this Agreement. Seller shall ensure that all contractors and subcontractors are sufficiently qualified and experienced equal to the standard observed by a competent practitioner of the profession in which the consultant or subcontractor is engaged. Seller shall provide five Business Days' prior notice via electronic mail of a contractor or subcontractor accessing any Project Site. 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.

Prevailing Wages. Seller shall (i) pay Prevailing Wages in connection with the construction, maintenance, and operation of each Project Site and (ii) comply with all provisions of California law applicable to public contracting, including, but not limited to bond requirements.

Liens.

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, except such encumbrances as may be required to allow Seller access to any Project Site, (each a "Lien") on or with respect to any Project. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to any Project Site or Improvements, other than those Liens that Seller is permitted by Law to place on Purchaser's interest in a Project Site 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 the same and shall promptly (and in all events within 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.

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 or any Project Site as a result of the indemnifying Party's breach of its obligations under Section 9.m.i.

Option to Purchase.

At the end of the seventh (7th), tenth (10th), and fifteenth (15th) Contract Years and, with respect to each Project, at the end of the applicable Initial Term and each Renewal Term of such Project, so long as Purchaser is not in default under this Agreement, Purchaser may purchase any Project (up to and including, an entire City Portfolio) from Seller on any such date for a purchase price equal to the Fair Market Value of such Project. The "**Fair Market Value**" of a Project shall be the fair value of such Project determined between a willing buyer and a willing seller, each having adequate information and neither being under the compulsion to sell. The Fair Market Value of a Project shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, 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 Project. The costs of such appraisal shall be borne by the Parties equally. The Purchaser shall have a reasonable period of time to review and reconsider and withdraw its election to purchase the Project and shall have no obligation to accept such appraisal and may, if it disagrees with such appraisal, obtain, at its cost, its own separate appraisal by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. If such appraisals materially differ, the Parties shall meet and confer and cooperate with one another to reconcile such differing appraisals, including by the appointment of a third qualified appraiser at the Purchaser's cost who would receive and review the previous appraisals. Each appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Project as of the date of Project title transfer. Purchaser must provide a notification to Seller of its intent to purchase a Project 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 Renewal Term of such Project, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Renewal Term, as applicable. Prior to Project purchase and subject to Seller's requirements regarding confidentiality, non-disclosure and non-use, and at Purchaser's cost, Seller shall provide Purchaser with reasonable access to such documentation and books and records related to the operation and maintenance of the Project and shall afford Purchaser or its designees the opportunity to inspect the Project and such documentation, books and records for purposes of determining the condition, state of repair, efficiency and reasonably expected costs of maintenance or repair of the Project reasonably necessary to maintain or restore the Project to a condition recognized as being in accordance with prudent solar industry standards. Subject to Seller's requirements regarding confidentiality, non-disclosure and non-use, and at the Purchaser's cost, Purchaser shall have the right to provide such documentation and materials and the results of any reports by third parties related to such inspections to such appraisers as reasonably necessary for such appraisers to consider in connection with their appraisals.

Seller shall transfer good title to the Project 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. Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and that are then assignable pursuant to their terms. Seller shall also provide Purchaser all Project operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the Project upon Purchaser's reasonable request.

Relocation of a Project. With respect to each Project, if, during the Project Term, (i) Purchaser ceases to conduct business operations at the applicable Project Site, (ii) Purchaser vacates such Project Site, (iii) the Project Site have been destroyed or (iv) the Purchaser is otherwise unable to continue to host the Project or to accept the electricity delivered by the Project for any other reason (other than a Seller Default), then, in each case, Purchaser may propose in writing the relocation of the applicable Project to a certain location, at Purchaser's sole cost and expense, in lieu of termination by Seller of the applicable Project or this Agreement for a Purchaser Default. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of such Project, which relocated site shall be subject to the approval of Seller in its reasonable discretion and subject to the negotiation of a mutually acceptable license. If the Parties are unable to reach agreement on relocation of the Project within 120 days after the date of receipt of Purchaser's proposal, Seller may terminate the Project pursuant to Section 2.b.

Removal of Project upon Termination or Expiration; Removal Fund.

Removal of Project. Upon the expiration of each Project Term or earlier termination of a Project or this Agreement, Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising each such Project from the applicable Project Site with a targeted completion date that is no later than 90 days after the expiration of the applicable Project Term (the "**Removal Date**"), Seller shall ensure that the portion of the Project Site where a Project is located be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of the Project's mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the Project 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 Project removal. If Seller fails to remove or commence substantial efforts to remove a Project by such agreed upon date, Purchaser may, at its option, remove the Project to a public warehouse and restore the Project Site to its original condition (other than ordinary wear and tear) at Seller's sole expense, the costs related to which Seller shall reimburse Purchaser within 30 days of receipt of an invoice thereof.

Removal and Disposal Fund. In order to ensure that funds are available for the removal of all tangible property comprising each Project from the applicable Project Site and remediation of the Project Site upon the expiration of the first Project Term or earlier termination of a Project or this Agreement, Seller shall establish an interest-bearing escrow account at a federally insured banking institution to hold funds dedicated for such purpose (the "**Removal Fund**"). The Removal Fund shall only be used by Seller, Purchaser or the applicable City to pay for the removal of Projects from the applicable Project Site upon expiration of the applicable Project Term or earlier termination of a Project or this Agreement; provided, however, Seller shall be solely responsible for all costs of removal, including costs that exceed the amount deposited in the Removal Fund.

Interest. All interest earned shall become part of the Removal Fund.

Right to Review. Purchaser shall have the right reasonably to request and review the Removal Fund balance at any point prior to expiration of the Term, upon written notice to Seller.

Deposits. No later than the earliest Commercial Operation Date for any Project hereunder, Seller shall deposit fifty-one thousand five hundred twelve dollars (\$51,512) into the Removal Fund (the "**Initial Deposit**"). Within sixty (60) days after the beginning of the 15th Contract Year, Seller shall obtain a quote for removal costs for the entire Portfolio from an expert mutually agreeable to the Parties (the "**Removal Cost Quote**"). If the Removal Cost Quote exceeds the Initial Deposit, Seller shall deposit an annual amount equal to 1/5 of the difference between the Initial Deposit and the Removal Cost Quote within 10 days of receiving the Removal Cost Quote and on the first day of the subsequent Contract Years, until the Removal Fund (including interest income) has a balance equal to or greater than the Removal Cost Quote. If the Removal Cost Quote is less than the Initial Deposit, Seller may withdraw the difference, such that the amount in the Removal Fund is equal to the Removal Cost Quote. Funds from the Removal Fund shall be disbursed as needed on a pro-rated per kW basis for individual Projects. Concurrently with each deposit or withdrawal from the Removal Fund, or upon written request by Purchaser, Seller shall provide Purchaser with reporting of the amount held in the Removal Fund and will certify and attest to the accuracy of such reporting by issuing a notice substantially in the form of Exhibit 10.

Estimate of Removal Costs. No later than 150 days prior to the expiration of each Project Term, Seller shall provide Purchaser a written estimate of the cost to remove the applicable Project and restore the applicable Project Site to its condition prior to the installation of the Project. The Parties shall meet and confer within 30 days after such written estimate is received by Purchaser to resolve any concerns regarding such estimated cost.

Abandonment. If Seller fails to remove or commence substantial efforts to remove a Project by the applicable Removal Date, any property not removed from the Project Site shall be deemed abandoned by Seller, and shall become the property of the applicable City and the City may, at its option, remove the Project Site to a warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. If the City removes the Project from the Project Site, it shall be entitled to reimbursement from the Removal Fund. The City shall have no liability to Seller for any property deemed abandoned per this Section 11.g.

Measurement; Meter.

Meter. Each Project's electricity output during the Term shall be measured by the applicable City's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). The Meter shall be selected, provided, installed, owned, maintained, programmed, and operated at the City's sole cost and expense.

Defaults, Remedies, and Damages.

Seller Project Defaults. The following events shall constitute a default of the applicable Project with respect to Seller (each, a "**Seller Project Default**"):

If, for six (6) consecutive months following the end of the first Measurement Period, the Project's Actual System Output falls below 75% of the Expected Annual Contract Quantity;

The Project's Actual System Output remains within the Underperformance Range once Seller meets the Daily Underperformance Damages Cap;

The Project's Actual System Output remains within the Significant Underperformance Range once Seller meets the Daily Significant Underperformance Damages Cap;

Seller fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date for such Project, except as excused by Seller's payment of Commercial Operation Delay Damages or by the other extensions provided under this Agreement;

Seller fails to maintain operations at any Project for 270 consecutive days;

A mechanics lien is filed against the Project because of any act or omission of Seller, and such lien has not been discharged, bonded or contested by Seller in good faith by proper legal proceedings within twenty (20) days of receipt of notice; and

If, in any two consecutive Contract Years, the average Monthly Storage Availability is, on an annual basis, less than 98% in each Contract Year, adjusted down by 2% annually.

Purchaser's Remedies for Seller Project Defaults. If a Seller Project Default has occurred and is continuing, and Seller has not otherwise begun to cure the Seller Project Default, in addition to all rights and remedies expressly provided herein, Purchaser may terminate the applicable Project by providing ten (10) days' prior written notice to Seller. Purchaser shall not be liable for any damages in connection with such termination. Upon Purchaser's exercise of termination rights pursuant to this Section 13.b, Purchaser may, at its option, provide written notice to Seller to remove the Project from the Project Site. If Purchaser makes such election, Seller shall be responsible for removing the Project at its own cost and restoring the Project Site to its pre-installation condition, within 60 days of provision of written notice. Purchaser's exercise of its rights under this Section 13.b will not obligate it to pay a Termination Payment. For the avoidance of doubt, the occurrence of a

Seller Project Default with respect to any Project under Section 13.a shall not constitute a Seller Default under Section 13.c or a Seller Project Default with respect to the remaining Projects hereunder.

Seller Defaults. The following events shall be defaults with respect to Seller (each, a “**Seller Default**”):

Seller delivers to Purchaser, without Purchaser’s prior consent, energy or other product from a resource other than the Portfolio;

a Bankruptcy Event shall have occurred with respect to Seller;

Seller fails to pay Purchaser any undisputed amount owed under this Agreement within 45 days after receipt of notice from Purchaser of such past due amount;

Seller breaches any material term of this Agreement, and if such breach can be cured within 20 days after Purchaser’s written notice of such breach and Seller fails to so cure; provided, however, that if such Seller Default cannot reasonably be cured within 20 days and Seller has demonstrated prior to the end of such initial 20 days that Seller is diligently pursuing such cure, the cure period shall be extended for a further reasonable period of time, not to exceed 90 days;

Seller fails to maintain any insurance required pursuant to this Agreement;

Seller assigns this Agreement or any of its rights hereunder other than in compliance with Section 19.a;

any material representation or warranty made by Seller hereunder is false or misleading in any material respect and is not cured within 20 days following receipt of written notice from Purchaser demanding such cure; and

any material misrepresentation or omission, in any metering or submetering, Load Modifying Resource Dispatch Plan, report or notice with regard to the delivery of the Product, or undue delay or withholding of such data, report or notice, which misrepresentation or undue delay or withholding is not cured within ten (10) Business Days of Purchaser’s receipt thereof.

Purchaser’s Remedies for Seller Defaults. If a Seller Default has occurred and is continuing, and Seller has not otherwise begun to cure the Seller Default, in addition to all rights and remedies expressly provided herein, Purchaser may terminate this Agreement and exercise any other remedy it may have at Law or equity or under this Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Purchaser to each Financing Party – the identity of which Seller will have provided to Purchaser and such Seller Default has not been cured within 20 days of delivery of such notice or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Purchaser within such 20 day period if a longer cure period is needed. Any Financing Party is an intended third-party beneficiary of this Section 13.d. Upon Purchaser’s exercise of termination rights pursuant to this Section 13.d, Purchaser may, at its option, provide written notice to Seller to remove the Project from the Project Site. If Purchaser makes such election, Seller shall be responsible for removing the Project Site at its own cost and restoring the Project Site to its pre-installation condition, within 60 days of provision of written notice. Purchaser’s exercise of its rights under this Section 13.d will not obligate it to pay a Termination Payment.

Purchaser Project Defaults. The following events shall constitute a default of the applicable Project with respect to Purchaser (each, a “**Purchaser Project Default**”):

The occurrence of any act or omission by Purchaser that causes Purchaser to lose its rights to occupy and enjoy the Project Site, unless the Parties agree upon a relocation of the applicable Project in accordance with Section 10; and

The occurrence of any act or omission by Purchaser that operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Purchaser to lawfully conduct the operations that Purchaser is required or permitted to conduct on the Project Site.

Seller's Remedies for Purchaser Project Defaults. If a Purchaser Project Default has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Seller may terminate the applicable Project by providing ten (10) days' prior written notice to Purchaser, and may demand payment of the applicable Termination Payment for such Project by Purchaser, which is a reasonable approximation of Seller's damages. Upon such termination, Seller shall remove the applicable Project and shall remediate and restore the Project Site to the condition preceding the installation of the Project. For the avoidance of doubt, the occurrence of a Purchaser Project Default with respect to any Project under Section 13.e shall not constitute a Purchaser Default under Section 13.g or a Purchaser Project Default with respect to the remaining Projects hereunder.

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

a Bankruptcy Event shall have occurred with respect to Purchaser;

Purchaser fails to pay Seller any undisputed amount owed under the Agreement within 90 days after receipt of notice from Seller of such past due amount;

Purchaser breaches any material term of this Agreement, if such breach can be cured within 30 days after Seller's notice of such breach and Purchaser fails to so cure; provided, however, that if such Purchaser Default cannot reasonably be cured within 30 days and Purchaser has demonstrated prior to the end of such initial 30 days that Purchaser is diligently pursuing such cure, the cure period shall be extended for a further reasonable period of time, not to exceed 90 days;

any material representation or warranty made by Purchaser hereunder is false or misleading in any material respect and is not cured within 30 days following receipt of written notice from Seller demanding such cure;

Purchaser fails to maintain any insurance required pursuant to this Agreement;

Purchaser assigns this Agreement or any of its rights hereunder other than in compliance with Section 19.a; and

Purchaser prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (a) is permitted under this Agreement or (b) is cured within ten days after written notice thereof from Seller.

Seller's Remedies for Purchaser Defaults. If a Purchaser Default has occurred and is continuing, in addition to all rights and remedies provided at Law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, Seller may terminate this Agreement and demand payment of the applicable Termination Payment(s) by Purchaser, which is a reasonable approximation of Seller's damages. Upon such termination, Seller shall remove the applicable Project, at Purchaser's cost and expense, and shall remediate and restore the Project Site to the condition preceding the installation of the Project.

Obligations Following Termination.

Reservation of Rights. Except in the case of a termination under Sections 13.f and 13.h and payment of the applicable Termination Payment, if any, determined pursuant to Sections 13.f and 13.h, 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 Purchaser Default or Seller Default under this Agreement.

Mitigation Obligation. Regardless of whether this Agreement is terminated for a Seller Default or Purchaser Default, as applicable, the non-defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Seller Default or Purchaser Default, as applicable; provided that such obligation shall not reduce Purchaser's obligation to pay the applicable full Termination Payment following a Purchaser Default.

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 electricity that would have been delivered to Purchaser but for a Purchaser breach or Purchaser Default.

Representations and Warranties.

General Representations and Warranties. Each Party represents and warrants to the other the following:

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, joint powers authority 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).

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.

Such Party presently is not engaged in any activity, direct or indirect, that would conflict in any manner or degree with the performance of services required for the proper functioning of the Portfolio or such Party's obligations under this Agreement.

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

Licenses. (a) Pursuant to each City Agreement, each applicable City is required to lease to Purchaser a right of access or other interest in the applicable Project Sites, and Purchaser has or will have the license(s) set forth in Section [7.a] of such City Agreement, such that Purchaser has the full right, power, and authority to grant the Non-Exclusive Licenses set forth in Section 9.a, and (b) such grant of each Non-Exclusive License does not violate any Law applicable to Purchaser or the applicable Project Sites 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 Project Sites.

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.

Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to (a) the Project Sites, (b) the Improvements on which each Project is to be installed, if applicable, (c) Purchaser's planned use of the Project Sites and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.

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. Purchaser is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

Limit on Use. No portion of the electricity generated by the Portfolio shall be used to heat a swimming pool.

Seller's Warranties and Performance Guarantee. With respect to each Project, Seller shall provide the following:

If Seller penetrates the roof of any Improvement on which any Project is installed, during Project installation or any Project 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) 10 years following the completion of the Project installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.

If Seller damages any other part of the Project or any Improvement (including roof damages not covered under Section 14.c.i), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.

Seller guarantees that the Project will be (A) fit for its intended purpose and free from defects in design, materials, and workmanship and (B) perform as intended for the duration of the Warranty Period (as defined below). The warranty period for each Project will last 15 years, commencing from six months after the Project Energy from such Project arrives at the Delivery Point (such period, the “**Warranty Period**”). If all or a portion of the Project is determined to be defective during the Warranty Period, Seller shall provide an equivalent part or parts for replacement and instruction for the replacement or credit Purchaser for such replacement. In the event the defect is not cured after such replacement, Seller shall provide additional instruction and may dispatch service personnel for supervision or, if any, repair. The cost of shipment is included in the warranty.

Seller hereby provides the Performance Guarantee and payments for Project underperformance (if applicable) as set forth in Exhibit 3.

Seller represents and warrants that it, its employees, contractors and agents are not suspended, debarred, or excluded from, or ineligible from, receiving federal or state funds. Seller shall within 30 days advise Purchaser if, during the Term, the Seller becomes suspended, debarred or excluded from or ineligible for, receiving federal or state funds.

Seller warrants, represents, and covenants that all of its operating and maintenance personnel shall be licensed and in good standing, and sufficiently qualified, experienced and trained equal to the standard observed by a competent practitioner of the profession in which the personnel is engaged throughout the Term.

Seller expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the Purchaser, in compliance with all applicable Laws.

Seller covenants to maintain and repair the Project Site if such maintenance and repairs are necessary as a direct result of Seller’s authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Purchaser.

NO OTHER WARRANTY. THE WARRANTIES AND PERFORMANCE GUARANTEE SET FORTH IN SECTIONS 14.A AND 14.C AND EXHIBIT 3 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 AND EXHIBIT 3, NO WARRANTY OR PERFORMANCE GUARANTEE, 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. IF A PERFORMANCE GUARANTEE IS BEING PROVIDED, THE PERFORMANCE GUARANTEE WILL REPRESENT A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTEE. IF THE ISSUER OF THE PERFORMANCE GUARANTEE (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTEE MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTEE WILL AFFECT PURCHASER’S OBLIGATIONS UNDER THIS AGREEMENT.

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

Seller’s Insurance. Seller shall, through cumulative coverage with its contractor, obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 5 of the applicable Addendum for the Term of this Agreement.

Purchaser's Insurance. Purchaser shall maintain (a) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (b) property insurance on all Project Sites and Improvements for the full replacement cost thereof, and (c) during the construction of each Project prior to the Commercial Operation Date for such Project, construction all-risk form property insurance covering the Project during such construction periods.

Policy Provisions. Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least 30 days (ten days for non-payment of premiums) written notice before the insurance is 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.

Certificates. Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. 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.

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.

Waiver of Subrogation. Seller's policy or policies shall insure against all risks of direct physical loss or damage and shall name Purchaser as additional insured, but only to the extent of its interest. All policies of insurance obtained by either Party concerning the Project Sites, the Projects, and any Improvements and the respective contents located thereon, shall waive the insurer's right of subrogation against other Party.

Ownership.

Ownership of Project.

Ownership; Personal Property. Throughout the Term, Seller shall be the legal and beneficial owner of each Project, and each Project will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the applicable Project Site or any Improvement on which such Project is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of each Project and all tax filings and reports shall be filed in a manner consistent with this Agreement. Each Project will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code

Notice to Purchaser Lienholders. Purchaser shall use commercially reasonable efforts to place all parties having a Lien on the applicable Project Sites or any Improvement on which a Project is installed on notice of the ownership of such Project and the legal status or classification of such Project as personal property. If any mortgage or fixture filing against any Project Site could reasonably be construed as prospectively attaching to the any Project as a fixture of such Project Site, Purchaser shall provide a disclaimer or release from such lienholder.

Fixture Disclaimer. With respect to each Project Site, if Purchaser is the fee owner of such Project Site, Purchaser consents to the filing of a disclaimer of any Project thereon as a fixture of the Project Site in the office where real estate records are customarily filed in the jurisdiction where the Project Site is located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.

Indemnification and Limitations of Liability.

Indemnity by the Parties. To the fullest extent permitted by law, each Party ("**Indemnifying Party**") shall defend, indemnify, and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its permitted successors and assigns, and their elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "**Indemnified Party**") from and against any and all third-party claims, liability or losses

("Claims"), including but not limited to those losses arising from (i) personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this Agreement, (iv) fines or penalties payable by the Indemnified Party or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or, in the case of Seller, Purchaser's use of any service, technology or good provided by Seller to Purchaser under this Agreement infringes any patent, trademark, copyright or other intellectual property right, including trade secret rights, of a third-party, except as may arise solely from the negligence, willful misconduct or violation of Law by the Indemnified Party, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify, and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

Design Professional Services. To the extent that a portion of Seller's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section 17.b shall be subject to any applicable limitations mandated by Civil Code Section 2782.8.

Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted under 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 Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. 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.c 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.c for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party. All of the Parties' obligations under this Section 17.c are intended to apply to the fullest extent permitted by Law and shall survive the expiration or sooner termination of this Agreement.

Environmental Indemnification.

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 any Project Site of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

Purchaser Indemnity. Purchaser shall cause each City to 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 applicable Project Sites of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by the applicable City or any of its contractors, agents or employees.

Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about any Project Site generally or any deposit, spill or release of any Hazardous Substance.

Limitations on Liability.

No Consequential Damages. Except with respect to indemnification of third-party claims pursuant to Section 17.a, neither Party (or the City, as applicable) or its elected officials, directors, officers, shareholders, partners, members, agents, employees, subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, punitive or

consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption), whether by statute, in tort, by contract or otherwise, arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment shall be deemed to be direct, and not indirect or consequential, damages for purpose of this Section 17.e.i.

Cumulative Remedies. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NON-EXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED.

Exclusive Remedies. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED UPON AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED.

Comparative Negligence. Where negligence is determined to have been joint, contributory or concurrent, each Party (and each City, as applicable) shall bear the proportionate cost of any liability.

Change in Law.

Impacts of Change in Law. If either Party determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on such Party's rights, entitlement, obligations or costs under this Agreement, then Party may so notify the other Party in writing of such Change in Law. Within 60 days following receipt by the other Party 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 60-day period, then Seller may terminate this Agreement and remove the Projects and restore the Project Sites in accordance with Section 11 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

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.

Load Modification.

Purchaser retains all rights to the Capacity Attributes, including, but not limited to resource adequacy, Load Modification and other capacity commodities sold in the CAISO Markets or otherwise. Purchaser shall have exclusive rights to offer, bid or otherwise submit any Capacity Attributes or any component thereof from any Project for resale in the CAISO Markets or to any third party, and shall receive any and all related revenues.

For each Storage Project, no later than the first Dispatch Plan Deadline occurring during the applicable Project Term, , Seller shall coordinate with Purchaser to confirm the Load Modifying Resource Dispatch Plan for such Project for the first year of the applicable Project Term, which shall provide for a 25% reserve margin for resilience, and optimization of Storage Project dispatch for customer bill savings. For each year of the applicable Project Term, Seller shall give storage performance data to Purchaser, so that Purchaser can provide guidance to Seller and Seller shall submit to Purchaser a Load Modifying Resource Dispatch Plan no less than [30] Business Days before the Dispatch Plan Deadline. No less than [15] Business Days before the Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the upcoming year. Upon request by Purchaser, Seller shall update the Load Modifying Resource Dispatch Plan on a more frequent basis. (e.g., monthly).

With respect to each Storage Project, Purchaser will have the option to become Scheduling Coordinator of the Project through Open Charge Point Protocol (OCPP), or through another, similar communication protocol, in either case so long as Purchaser supplies the necessary protocol. Purchaser shall provide Seller with no less than ninety (90) days prior written notice of its intent to exercise its option to become Scheduling Coordinator of the Project.

Assignment and Financing.

Assignment.

Restrictions on Assignment. Subject to the remainder of this Section 20.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 and storage systems such as those contained in the Portfolio.

Permitted Assignments. Notwithstanding Section 20.a.i:

1. Seller may, by providing prior written notice to Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party, (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 (each, a “**Permitted Seller Assignee**”); 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 an affiliate of Purchaser; 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; or
 - b. to an assignee that has an Investment Grade credit rating at the time of the assignment each, a “**Permitted Purchaser Assignee**”.

Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors, Permitted Seller Assignees, and Permitted Purchaser Assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

Financing and Collateral Assignment. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors, including tax equity investors or other third parties (each a “**Financing Party**”) in connection with the installation, construction, ownership, operation, and maintenance of the Portfolio. 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.

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.

Confidentiality.

Confidential Information. To the maximum extent permitted by applicable Law, if either Party provides 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. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 20.a.

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.

The Parties acknowledge and agree that the Agreement and any transaction entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Permitted Disclosures. Notwithstanding Section 20.a,

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, counsel and Financing Parties, and their respective consultants and counsel (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; and

upon request or demand made to either Party hereto by any third person or entity not a Party hereto and not otherwise subject to the provisions of Section 20.b.i pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), the disclosing Party shall as soon as practical notify the other Party in writing via electronic mail that such request has been made. The other Party shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by the disclosing Party. If the other Party takes no such action after receiving the foregoing notice from the disclosing Party, the disclosing Party shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If the other Party takes or attempts to take such action, the disclosing Party shall provide timely and reasonable cooperation to the other Party, if requested by the other Party, and the other Party agrees to indemnify and hold harmless the disclosing Party and its Representatives from any claims, liability, award of attorneys' fees or damages, and to defend any action, claim or lawsuit brought against any of the disclosing Party or its Representatives for the disclosing Party's refusal to disclose any Requested Confidential Information.

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 years.

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 renewable energy or battery storage 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, as applicable, 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 Portfolio 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, Purchaser is entitled to place signage on any Project Site reflecting its association with the Portfolio and to make public statements regarding the transactions contemplated by this Agreement and the Portfolio and its use as part of Purchaser's monthly, public board meetings.

General Provisions.

Definitions and Interpretation. Unless otherwise defined or required by the context in which any term appears: (i) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement, (ii) the singular includes the plural and vice versa, (iii) the words "herein," "hereof", and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iv) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, (v) the words "include," "includes" and "including" mean include, includes and including "without limitation," (vi) 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"), (vii) words "herein," "hereunder," and "hereof" refer to the provisions of this Agreement as a whole and not to any particular portion or provision of this Agreement, and (viii) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders, and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires. 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.

Choice of Law; Venue. The law of the State of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. In the event that a suit is brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of California in the County of Alameda or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California.

Dispute Resolution. The Parties shall negotiate in good faith and attempt to resolve expeditiously and inexpensively any dispute, controversy or claim arising out of or relating to this Agreement (a "**Dispute**") within 15 days after the date that a Party gives written notice of such Dispute to the other Party. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either 30 days of initiating such discussions, or within 40 days after submission of notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than 30 days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

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 days after deposit in the mail. Notices must be sent to the person identified on the Cover Sheet of this Agreement at the addresses set forth on the Cover Sheet of this Agreement or such other address as either Party may specify in writing.

Survival.

The provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation the provisions enumerated in this Section 21.e, will survive termination of this Agreement:

obligations to pay by either Party that have accrued under Section 3.b or otherwise prior to termination or expiration;

obligations to repair damage caused by either Party under Section 8.b or otherwise;

Section 8.d (Maintenance and Inspection of Records);

Section 11 (Removal);

Section 14 (Representations and Warranties);

Section 17 (Indemnification and Limitations on Liability);

Section 20.d (Goodwill and Publicity); and

Section 21.e (Survival).

Compliance with All Laws. The Parties shall at all times comply with all applicable Laws. Purchaser shall at all times keep Seller fully informed of Purchaser's charter, codes, ordinances, and regulations and of all state and federal laws in any manner affecting the performance of this Agreement to ensure that the Parties shall at all times comply with all applicable local codes, ordinances, and regulations, as they may be amended from time to time. Examples of such regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq., the Fair Packaging and Labeling Act, and the standards and regulations issued there under.

Good Faith & Fair Dealing. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

Construction. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Parties in Interest; No Third Party Beneficiaries. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors, and

assigns of the Parties hereto. Neither this Agreement nor any other agreement contemplated hereby shall be deemed to confer upon any person not a party hereto or any City any rights or remedies hereunder.

Non-Discrimination. Seller shall comply with all applicable Laws, including City’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate (i) against any subcontractor, employee or applicant for employment or (ii) in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations or marital status in the recruitment or selection for training, including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

Non-Exclusive Contract. This Agreement does not establish an exclusive contract between the Purchaser and the Seller for the purchase of electricity or power or any services. The Purchaser expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

Further Assurances. Each Party shall provide such information, execute and deliver any instruments and documents, and take such other actions as may be reasonably requested by the other Party, which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

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.

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 applicable Projects in accordance with Section 11 of this Agreement.

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 purchaser of electricity from the Portfolio.

No Agency, Lease, Joint Venture or 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. Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant or employee of Purchaser. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between Purchaser and Seller. No Person performing any services and/or supplying all goods shall be considered an officer, agent, servant or employee of Purchaser, nor shall any such Person be entitled to any benefits available or granted to employees of Purchaser. Any terms in this Agreement referring to direction from Purchaser shall be construed as providing for direction as to policy and the result of

Seller's work only, and not as to the means by which such a result is obtained. Purchaser does not retain the right to control the means or the method by which Seller performs work under this Agreement.

Account Manager. Seller must assign an account manager to Purchaser to facilitate the contractual relationship and to be fully responsible and accountable for fulfilling Purchaser's requirements. Seller represents and warrants that such Person will ensure that Purchaser receives adequate support, problem resolution assistance, and required information on a timely basis.

Entire Agreement, Modification, Severability. This Agreement, together with all of the exhibits, 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.

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. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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.

Disentanglement. Seller shall cooperate with Purchaser to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Purchaser's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or Purchaser's activities. Seller shall return to Purchaser all Purchaser assets or information in Seller's possession. Seller shall deliver to Purchaser or its designee, at Purchaser's request, all documentation and data related to Purchaser, including, but not limited to, Purchaser data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Purchaser, all at no charge to Purchaser.

Accountability. Seller will be the primary point of contact and assume the responsibility of all matters relating to this Agreement, including those involving the manufacturer, deliverer or any subcontractor, as well as payment issues. If issues arise, the Seller must act as soon as reasonably practicable to correct or resolve the issues.

Cooperation with Review. Seller shall cooperate with Purchaser's periodic review of Seller's performance. Such review may be conducted on a bi-annual basis, in the reasonable discretion of Purchaser, upon no less than 60 days' advance written notice to Seller.

Authority. The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this Agreement.

Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

Facsimile or Electronic Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to

the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

[Remainder of Page Intentionally Left Blank]

Schedule A

Defined Terms

“**Actual System Output**” has the meaning set forth in Section 4.a.

“**Addendum**” has the meaning set forth on the Cover Sheet.

“**Agreement**” has the meaning set forth on the Cover Sheet.

“**Ancillary Services**” means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, contingency reserves, other products associated with electric generation and Energy that a Project is capable of providing and all other beneficial attributes and outputs of such Project not required for the operation of the Project.

“**Approval**” has the meaning set forth in Section 6.b.

“**Bankruptcy Event**” means with respect to any entity, the occurrence of any of the following: such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in 60 days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required to close.

“**CAISO**” means the California Independent System Operator or any successor entity performing similar functions.

“**CAISO Markets**” shall have the meaning set forth under the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Cooperation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the Federal Energy Regulatory Commission (or any successor government agency).

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that a Project can accept at or deliver to the applicable Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“**CEC**” means the California Energy Commission or any successor entity performing similar functions.

“**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.

“**Charging Energy**” means, with respect to a Storage Project, the as-available Energy produced by the applicable Generating Project, less transformation and transmission losses, if any, delivered to the Storage Project pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Project, and all Charging Energy shall be generated solely by the Generating Project.

“**Charging Notice**” means the commercially reasonable operating instruction, and any subsequent updates, given by Purchaser to Seller, where applicable, requesting any Storage Project charge at a specific kW rate to a specified Stored Energy Level, provided that Purchaser shall have provided Seller reasonable prior written notice and Seller shall have approved such request.

“**City**” means, each of, City 1, City 2, City 3, and City 4 .

“**City Agreement**” has the meaning set forth in Section 0.

“**City Effective Date**” means, with respect to each City Portfolio, the date that the underlying City Agreement has been executed and delivered, respectively, by Purchaser and the applicable City.

“**City Portfolio**” means, with respect to each City, all Projects located within such City, as set forth in Exhibit 2-A of the applicable Addendum, on a collective basis.

“**City Term**” has the meaning set forth in Section 0.

“**Claims**” has the meaning set forth in Section 17.a.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

“**Commencement of Installation**” means, with respect to a Project, the date that Seller or its installation contractor has begun physical installation of such Project on the applicable Project Site.

“**Commercial Operation**” means, with respect to a Project, that the Project is mechanically complete, capable of providing electricity to the Delivery Point at the capacity specified in Exhibit 2-B, subject to the caveats set forth in this Agreement, and has permission to operate from the relevant Governmental Authority. The Project is fully operational, reliable, and interconnected, fully integrated and synchronized with the distribution system.

“**Commercial Operation Date**” has the meaning set forth in Section 6.i.

“**Commercial Operation Delay Damages**” means an amount equal to \$1.00/kW per day for each day after the Expected Commercial Operation Date that the applicable Project has not achieved Commercial Operation, calculated on a per-Project basis.

“**Commissioning Test**” has the meaning set forth in Section 6.d.

“**Confidential Information**” means, whether oral or written, which is delivered by the receiving party or learning party, including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either the learning party or the receiving party stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

“**Contract Amount**” has the meaning set forth on the Cover Sheet.

“**Contract Price**” has the meaning set forth in Exhibit 1 of the applicable Addendum.

“**Contract Year**” means a period of 12 consecutive months. The first Contract Year shall commence on the earliest Commercial Operation Date for all Projects hereunder, and each subsequent Contract Year shall commence on the anniversary of such Commercial Operation Date.

“**CPUC**” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**Daily Significant Underperformance Damages**” means an amount equal to (a) \$0.09/kWh, divided by (b) 120, calculated on a per-Project basis.

“**Daily Significant Underperformance Damages Cap**” has the meaning set forth in Section 4.c.

“**Daily Underperformance Damages**” means an amount equal to (a) \$0.07/kWh, divided by (b) 120, calculated on a per-Project basis.

“**Daily Underperformance Damages Cap**” has the meaning set forth in Section 4.b.

“**Delivery Point**” has the meaning set forth in Exhibit 2-B.

“**Discharging Energy**” means, with respect to a Storage Project, all Energy delivered to the applicable Delivery Point from the Storage Project, as measured at the Storage Project metering points by the Storage Project Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Project as Charging Energy.

“**Dispatch Plan Deadline**” means, with respect to each year of the Term, March 15th, or such other date that is 30 days prior to the date on which Purchaser is required to submit its annual aggregate peak demand forecast pursuant to the rules and published guidance of the CEC.

“**Dispute**” has the meaning set forth in Section 21.c.

“**Domestic Content Adder**” has the meaning set forth in Section 5.c.

“**Domestic Content Requirements**” means any and all requirements for obtaining the Domestic Content Adder under Section 48(a)(12) or 48E(a)(3)(B) of the Code, including the requirements set forth in IRS Notice 2023-38 (2023-22 I.R.B. 872), or any corresponding provision or provisions of succeeding law.

“**Effective Date**” has the meaning set forth in Section 2.a.

“**Electrical Losses**” means, with respect to any Project, all transmission or transformation losses between the Project and the applicable Delivery Point, including, as applicable, losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to a Storage Project, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

“**Energy**” means electrical energy generated by a Generating Project.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Portfolio (to the extent of sales to Purchaser of Energy pursuant to Section 3), and its displacement of conventional energy generation. Environmental Attributes include, without limitation, RECs, and all of the following: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions.

“**EPC Contract**” means, individually or collectively as the context requires, engineering, procurement, and construction agreements for construction of one or more Projects, to be entered into by and between Seller and an EPC Contractor.

“**EPC Contractor**” means, individually or collectively as the context requires, one or more contractors hired by Seller to perform services for Seller under the EPC Contract.

“**Execution Date**” has the meaning set forth in the Recitals.

“**Expected Annual Contract Quantity**” means, with respect to a Project, the quantity of Energy that Seller expects to be able to deliver to Purchaser or to deliver as Charging Energy to the Storage Project from the Generating Project for the applicable Measurement Period in the amount set forth in the table under Exhibit 1 of the applicable Addendum.

“**Expected Commercial Operation Date**” means, with respect to each City Portfolio, the date that is 455 days after the applicable City Effective Date.

“**Financing Party**” has the meaning set forth in Section 19.b.

“**Force Majeure Event**” means any event or circumstance beyond the reasonable control of and without the fault or negligence of breaching Party, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; epidemic; pandemic or any of the following related to the Outbreak: (i) action by a Governmental Authority that is broader or more restrictive than those measures in effect on the Effective Date or (ii) new events, circumstances or conditions related to the Outbreak arising after Effective Date, provided that such new event, circumstance or condition related to the Outbreak directly impacts the breaching Party’s ability to perform its obligations under this Agreement; 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; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event does not include economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Purchaser's ability to buy the Product, or any component thereof at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under the Agreement); Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Portfolio or any Projects thereunder, except to the extent such inability is caused by a Force Majeure Event; the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Portfolio or any Projects thereunder, except to the extent such inability is caused by a Force Majeure Event; any equipment failure except if such equipment failure is caused by a Force Majeure Event; or the Outbreak or the effects or impacts of the Outbreak, except as set forth above.

"Forced Project Outage" means, with respect to a Project, an unexpected failure of one or more components of the Project that prevents Seller from generating Energy or making Project Energy available at the applicable Delivery Point and that is not the result of a Force Majeure Event.

"Generating Project" means any individual solar photovoltaic generating Project listed in Exhibit 2-A of the applicable Addendum, located at the applicable Project Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, (ii) Charging Energy to the corresponding Storage Project, and (iii) Discharging Energy to the Delivery Point.

"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.

"Guaranteed Capacity" means, with respect to each City Portfolio, the amount of generating capacity of all Generating Projects thereunder, and the guaranteed amount of Storage Capacity of all Storage Projects thereunder, as measured in kW at the applicable Delivery Point, set forth on the Cover Sheet.

"Guaranteed Commercial Operation Date" means, with respect to a Project, the Expected Commercial Operation Date, as such date may be extended in accordance with this Agreement.

"Guaranteed Delivered Energy" has the meaning set forth in Section 4.a.

"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.

"Improvements" has the meaning set forth on the Cover Sheet.

"Incentives" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the Portfolio 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 Portfolio, and (iii) any other attributes, commodity, revenue stream or payment in connection with the Portfolio (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 Portfolio, provided that

Incentives shall not include RECs.⁵ Notwithstanding the foregoing, Incentives as defined herein shall not include any incentives, payments, or revenue associated with the Self-Generation Incentive Program (SGIP).

“**Indemnified Party**” has the meaning set forth in Section 17.a.

“**Indemnifying Party**” has the meaning set forth in Section 17.a.

“**Initial Deposit**” has the meaning set forth in Section 11.e.

“**Insolation**” has the meaning set forth in Section 9.j.

“**Interconnection Agreement**” means, with respect to a Project, the interconnection agreement entered into by Seller pursuant to which the Project will be interconnected with the Transmission System, and pursuant to which Seller’s interconnection facilities and any other interconnection facilities will be constructed, operated, and maintained during the Term.

“**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.

“**IRS**” means the U.S. Internal Revenue Service.

“**ITC**” means the investment tax credit under Section 48 or Section 48E of the Code.

“**ITC Filing Report**” has the meaning set forth in Section 5.d.

“**kW**” means kilowatts in alternating current, unless expressly stated in terms of direct current.

“**kWh**” means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**License Term**” has the meaning set forth in Section 9.a.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Purchaser, licensed in the State of California.

“**Lien**” has the meaning set forth in Section 9.m.

“**Load Modification**” means the reduction of Purchaser’s aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance through the use and implementation of a Storage Project within a City Portfolio that is capable dispatching energy.

“**Load Modifying Resource Dispatch Plan**” means, with respect to a Storage Project, a one-year plan, submitted for each calendar year of the applicable Project Term, or more frequently as reasonably requested by Purchaser, specifying on a month-by-month basis the hours of day during which the Contract Amount will be delivered from the Storage Project and substantially in the form of Exhibit 9.

“**Local Electric Utility**” means Pacific Gas and Electric Company, an investor-owned utility headquartered in San Francisco, California.

“**Measurement Period**” has the meaning set forth in Section 4.a.

“**Meter**” has the meaning set forth in Section 12.

“**Monthly Storage Availability**” means 98% of the Storage Contract Capacity.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**MSDS**” has the meaning set forth in Section 8.c.

⁵ NTD: Subject to review of the Inflation Reduction Act of 2022 (H.R. 5376).

“**Non-Exclusive License**” has the meaning set forth in Section 9.a.

“**Optimization Savings**” has the meaning set forth in Section 5.b.

“**Outage Allowance**” has the meaning set forth in Section 9.h.

“**Outbreak**” means the outbreak of coronavirus disease (COVID-19) that was first reported from Wuhan, China on or about December 31, 2019, and declared a “Public Health Emergency of International Concern” by the World Health Organization on January 30, 2020.

“**Parties**” and “**Party**” have the meanings set forth on the Cover Sheet.

“**Performance Guarantee**” has the meaning set forth in Exhibit 3.

“**Permitted Purchaser Assignee**” has the meaning set forth in Section 19.a.ii.

“**Permitted Seller Assignee**” has the meaning set forth in Section 19.a.ii.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” has the meaning set forth in Section 8.b.

“**Portfolio**” means, collectively, all Projects contemplated under this Agreement.

“**Prevailing Wages**” means the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Project**” means any individual Generating Project or Storage Project.

“**Project Energy**” means, with respect to a Project, the PV Energy and Discharging Energy, as applicable, during the monthly billing period contemplated under this Agreement, net of Electrical Losses and Station Use, as measured by the Meter, which Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**Project Site**” means, with respect to a Project, the real property upon which such Project shall be installed, as described or depicted in Exhibit 2-B of the applicable Addendum.

“**Prudent Operating Practice**” means (a) the applicable practices, methods, and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the solar industry during the relevant time period with respect to distributed generation generating facilities with integrated storage in the Western United States or (b) any of the practices, methods, and acts that, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to distributed generation generating facilities [with integrated storage] in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**Purchaser**” has the meaning set forth on the Cover Sheet.

“**Purchaser Default**” has the meaning set forth in Section 0.

“**Purchaser-Requested Outage**” has the meaning set forth in Section 9.h.

“**PV Energy**” means that portion of Energy that is delivered directly to the Delivery Point and is not Charging Energy or Discharging Energy.

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

“**Removal Cost Quote**” has the meaning set forth in Section 11.e.

“**Removal Date**” has the meaning set forth in Section 11.a.

“**Removal Fund**” has the meaning set forth in Section 11.b.

“**Renewal Term**” has the meaning set forth in Section 2.a.

“**Representatives**” has the meaning set forth in Section 20.b.

“**Requested Confidential Information**” has the meaning set forth in Section 20.b.ii.

“**Resource Adequacy Benefits**” means, with respect to a Project, the rights and privileges attached to the Project that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Project, in addition to flex attributes.

“**Resource Adequacy Rulings**” means CPUC Decisions 04 01 050, 04 10 035, 05 10 042, 06 04 040, 06 06 064, 06 07 031 06 07 031, 07 06 029, 08 06 031, 09 06 028, 10 06 036, 11 06 022, 12 06 025, 13 06 024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Term.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of the McGraw-Hill Companies, Inc.).

“**Scheduling Coordinator**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Addendum**” has the meaning set forth in Exhibit 6.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Significant Underperformance Range**” has the meaning set forth in Section 4.c.

“**Solar Generation Rate**” means the \$/kWh rate for PV Energy as set forth in Exhibit 1 of the applicable Addendum.

“**Station Use**” means, with respect to a Project:

- (a) the Energy produced or discharged by the Project that is used within the Project to power the lights, motors, control systems, and other electrical loads that are necessary for operation of the Project; and
- (b) the Energy produced or discharged by the Project that is consumed within the Project’s electric energy distribution system as losses.

“**Storage Capacity**” means, with respect to a Storage Project, (a) the maximum dependable operating capability of the Storage Project to discharge electric energy that can be sustained for four consecutive hours (in kW) and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Project is able to provide as the Storage Project is configured on the applicable Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Project to discharge electric energy.

“**Storage Capacity Test**” means any test or retest of the capacity of a Storage Project conducted in accordance with the testing procedures, requirement, and protocols set forth in Exhibit 4.

“**Storage Contract Capacity**” means, with respect to each City Portfolio, the total capacity (in kW) of all Storage Projects thereunder, initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to **Exhibit 4** to comply with Purchaser’s written request or reflect the results of the most recently performed Storage Capacity Test for each Storage Project.

“**Storage Project**” means any individual energy storage system or collective of energy storage systems listed in **Exhibit 2-A** of the applicable Addendum (including the operational requirements of the energy storage facility), located at the applicable Project Site and including mechanical equipment and associated facilities and equipment required to deliver Discharging Energy, as such Storage Project may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“**Stored Energy Level**” means, with respect to a Storage Project, at a particular time, the amount of electric energy in the Storage Project available to be discharged as Discharging Energy, expressed in kWh.

“**Term**” has the meaning set forth in **Section 2.a**.

“**Term Security**” means a cash reserve funded, held, and maintained by Seller or one of its subsidiaries or affiliates, in the amount set forth in the Security Addendum.

“**Termination Payment**” means the amount set forth in Section 5 of **Exhibit 1** of the applicable Addendum for the applicable Project.

“**Tier 1**” means, with respect to the Generating Projects, any equipment offered by any Tier 1 Supplier and, with respect to the Storage Projects, any battery storage system that (i) is offered by any Tier 1 Supplier, (ii) benefits from a manufacturer’s warranty (including an energy retention warranty), and (iii) includes all of the components, functionality, and other material features that affect performance and the user experience (i.e., data acquisition and operating controls) of a standard, high-quality storage facility.

“**Tier 1 Supplier**” means a “Tier 1 Module Manufacturer” as listed from time to time by *Bloomberg New Energy Finance’s PV Market Outlook*, published on a quarterly basis, or if no longer published, a similar publication agreed upon by Seller and Purchaser in writing, and as agreed to by Purchaser.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Underperformance Range**” has the meaning set forth in **Section 4.b**.

“**Warranty Period**” has the meaning set forth in **Section 14.c.iii**.

“**WECC**” means the Western Electricity Coordinating Council.

“**30% ITC**” has the meaning set forth in **Section 5.c**.

“**40% ITC**” has the meaning set forth in **Section 5.c**.

Schedule B

Form of Addendum

Addendum No. []

This Addendum No. [] (together with all Exhibits, the "Addendum") is made as of date of the latest signature below (the "Addendum Effective Date") between East Bay Community Energy Authority, a California joint power authority ("Purchaser"), and [], a [] ("Seller") (each, a "Party", and collectively the "Parties"). Capitalized terms used in this Addendum not defined herein have the meanings ascribed to them in the Solar Power Purchase & Battery Energy Storage Services Agreement by and between Purchaser and Seller, dated as of [].

The terms of this Addendum may be amended upon execution of a new addendum, substantially in the form hereunder, reflecting such adjusted terms.

Purchaser Representative:		Seller Representative:	
Contact Name:		Contact Name:	
Title:		Title:	
E-mail Address:		E-mail Address:	
Phone:		Phone:	
Applicable City Portfolio:			

- Addendum Duration.** This Addendum shall commence on the Addendum Effective Date and shall continue until the expiration of the applicable City Term or early termination of the applicable City Portfolio or this Agreement, as applicable.
- Exhibits.** This Addendum is comprised of the following exhibits:

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2-A</u>	City Portfolio Project Descriptions
<u>Exhibit 2-B</u>	Project Delivery Points and Project Sites
<u>Exhibit 3</u>	Performance Guarantee
<u>Exhibit 4</u>	Storage Addendum
<u>Exhibit 5</u>	Insurance Requirements
<u>Exhibit 6</u>	Security Addendum
<u>Exhibit 7</u>	Reserved
<u>Exhibit 8</u>	City Specific Terms

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their respective duly authorized representatives as of the Addendum Effective Date.

<i>SELLER</i>	<i>PURCHASER</i>
<i>[____]</i>	<i>East Bay Community Energy Authority</i>
<i>By: .</i>	<i>By:</i>
<i>Printed Name: _____</i>	<i>Printed Name: Nick Chaset</i>
<i>Title: _____</i>	<i>Title: Chief Executive Officer</i>
<i>Date: _____</i>	<i>Date: _____</i>

Exhibit 1

Pricing

1. Contract Price (Solar and Storage):

The Contract Price shall be based on the table and options provided below. Within ninety (90) days of the Effective Date of this Agreement, Purchaser shall provide written notice to Seller of the applicable Pricing Option that each City has chosen from the table below. As further described in Section 4.b, Seller shall update this **Exhibit 1** with the corresponding Termination Payment Schedules for each Project following confirmation of the City’s Contract Price option selection.

With respect to the Contract Price for each City, in the event that all the Generating Projects in the City Portfolio qualify for, and are awarded the 30% ITC, then the Contract Price shall be the applicable 30% ITC pricing as provided below. In the event that all Generating Projects in the City Portfolio qualify for, and are awarded the 40% ITC, then the Contract Price shall be the applicable 40% ITC pricing, as provided below. In the event that some Generating Projects in the City Portfolio do not qualify for any ITC, or Generating Projects within the City Portfolio qualify for different ITC rates, Seller shall provide to Purchaser a revised pricing proposal, describing any changes to the Pricing Options for such City Portfolio based on the results of the ITC awards (a “**Revised Pricing Proposal**”); provided that such changes to the Pricing Options should be based solely on the applicable ITC rate(s). Such Revised Pricing Proposal shall include capital budgets and operating models, the content of which shall reflect the estimated and probable range of all variables and assumptions, and all diligence materials, reports, data, and applicable information upon which such budgets and models are based as reasonably required to support the Revised Pricing Proposal. Upon receipt of the Revised Pricing Proposal, Purchaser shall provide written notice to Seller of the applicable Pricing Option that the City has chosen from the Revised Pricing Proposal.

2. Contract Price Exclusions. Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2.c of the General Terms and Conditions, the Contract Price excludes the following:

- a. structural upgrades to the Improvements, including ADA upgrades; and
- b. installation of public information screen or kiosk (including accompanying internet connection, power supply, technical support, and ADA access).

3. Expected Annual Contract Quantity:

<i>Contract Year</i>	<i>Production (kWh-AC)</i>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

4. Termination Payment Schedule:

a) City Portfolio Termination Payment Schedules:

City 4 City Portfolio Termination Payment Schedule:

Year	\$ per Watt DC	Termination Payment	Notes
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			
Year 11			
Year 12			
Year 13			
Year 14			
Year 15			

Year 16			
Year 17			
Year 18			
Year 19			
Year 20			
Year 21			
Year 22			
Year 23			
Year 24			
Year 25			
Year 26			
Year 27			
Year 28			
Year 29			
Year 30			

City 1 Portfolio Termination Payment Schedule:

Year	\$ per Watt DC	Termination Payment	Notes
Year 1			Includes tax penalties
Year 2			Includes tax penalties
Year 3			Includes tax penalties
Year 4			Includes tax penalties
Year 5			Includes tax penalties
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			
Year 11			
Year 12			
Year 13			

Year 14			
Year 15			
Year 16			
Year 17			
Year 18			
Year 19			
Year 20			
Year 21			
Year 22			
Year 23			
Year 24			
Year 25			
Year 26			
Year 27			
Year 28			
Year 29			
Year 30			

City 3 City Portfolio Termination Payment Schedule:

Year	\$ per Watt DC	Termination Payment	Notes
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			
Year 11			

Year 12			
Year 13			
Year 14			
Year 15			
Year 16			
Year 17			
Year 18			
Year 19			
Year 20			
Year 21			
Year 22			
Year 23			
Year 24			
Year 25			
Year 26			
Year 27			
Year 28			
Year 29			
Year 30			

City 2 City Portfolio Termination Payment Schedule:

Year	\$ per Watt DC	Termination Payment	Notes
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			

Year 10			
Year 11			
Year 12			
Year 13			
Year 14			
Year 15			
Year 16			
Year 17			
Year 18			
Year 19			
Year 20			
Year 21			
Year 22			
Year 23			
Year 24			
Year 25			
Year 26			
Year 27			
Year 28			
Year 29			
Year 30			

b) Generating Project Termination Payment Schedules:

Following the Effective Date of this Agreement, upon each City confirming the Pricing Option in accordance with Section 1 of this **Exhibit 1**, Seller shall update this Exhibit 1 so as to include the applicable Termination Payment Schedules for each Generating Project within the City Portfolio.

- 5. **Storage Addendum:** The provisions related to the operation of the Storage Projects and the determination of Storage Contract Capacity shall be governed by the terms of **Exhibit 4**.
- 6. **Security Addendum:** The provisions related to the security provisions shall be governed by the terms of **Exhibit 6**.
- 7. **Performance Guarantee:** The provisions related to the Performance Guarantee shall be governed by the terms of **Exhibit 3**.

Exhibit 2-A

City Portfolio Project Descriptions

City 1 Portfolio					
Project Name	Project Type	Project Address	Generating Project Size (kW)	Storage Project Size (kWh)	Project Description
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
TOTALS	-	-			-

City 2 Portfolio					
Project Name	Project Type	Project Address	Generating Project Size (kW)	Storage Project Size (kWh)	Project Description
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
TOTALS	-	-			-

City 3 Portfolio					
Project Name	Project Type	Project Address	Generating Project Size (kW)	Storage Project Size (kWh)	Project Description
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
TOTALS	-	-			-

City 4 Portfolio					
Project Name	Project Type	Project Address	Generating Project Size (kW)	Storage Project Size (kWh)	Project Description
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project <input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project				

	<input checked="" type="checkbox"/> Storage Project				
	<input checked="" type="checkbox"/> Generating Project				
	<input checked="" type="checkbox"/> Storage Project				
TOTALS	-	-			-

Exhibit 2-B

Project Delivery Points and Project Site Descriptions

For each Project, this **Exhibit 2-B** shall contain one or more drawings or images depicting:

1. The applicable Project Site, including the legal description and any applicable Improvements;
2. Proposed location of the Generating Project;
3. Proposed location of the Storage Project (if applicable);
4. The delivery point for (a) electricity generated by the Generating Project, and (b) Discharging Energy associated with the Storage Project (if applicable) (each, a “**Delivery Point**”);
5. Access points needed for Seller to install and service the Project;
6. Construction assumptions (if any);
7. Electrical diagrams; and
8. Metering information.

Exhibit 3

Performance Guarantee

(if selected on Exhibit 1)

In consideration for Purchaser’s entrance into the Solar Power Purchase & Battery Energy Storage Services Agreement (the “PPA”), between [] (“Seller”) and [] (“Purchaser”) this Performance Guarantee (this “Guarantee”) is entered into by the parties listed below (each a “Party” and collectively the “Parties”) as of the date signed by Seller below.

Purchaser:	<i>East Bay Community Energy Authority</i>	Seller:	
Name and Address:	<i>East Bay Community Energy Authority 1999 Harrison, Suite 800 Oakland, CA 94607</i>	Name and Address:	
Phone:		Phone:	
Fax:		Fax:	() ___ - ___
E-mail:		E-mail:	
Additional Purchaser Information:		Additional Seller Information:	<i>[e.g., Contractor’s License Number]</i>
Applicable City Portfolio:			

This Guarantee sets forth the terms and conditions of a Guarantee provided by Seller in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guarantee will be concurrent with the term of the Agreement; except that it will not exceed the applicable City Term. This Guarantee will be updated by Seller to reflect the as-built specifications of each Project contained in the applicable City Portfolio.

1. **Guarantee.** During the City Term, Seller guarantees that the Projects contained in the applicable City Portfolio will deliver (i) no less than 85% of the Expected Energy Delivered of the Generating Projects as set forth in **Table 1.A** below (such amounts the “**Guaranteed Energy Delivered**”), provided that the **Table 1.A** values are subject to downward adjustment for weather conditions, and (ii) no less than 85% of the Guaranteed Capacity of the Storage Projects as set forth in **Table 2.A** below (the “**Guaranteed Capacity Threshold**”).

A. Seller will use local weather data to reasonably determine the City Portfolio’s Guaranteed Energy Delivered, based on the following methods if available and in descending order of preference: (i) satellite data provided by a third-party vendor of Seller; or (ii) available data from a locally installed weather station at the Project Sites owned and properly maintained by Purchaser. Seller shall provide such data to Purchaser upon request.

Table 1.A: Guaranteed Energy Delivered of Storage Projects

Contract Year	Guaranteed Energy Delivered (kWh AC)
Year 1	
Year 2	
Year 3	

Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	
Year 16	
Year 17	
Year 18	
Year 19	
Year 20	
Year 21	
Year 22	
Year 23	
Year 24	
Year 25	

Table 2.A: Guaranteed Capacity Threshold of Storage Projects⁶

Contract Year	Guaranteed Capacity Threshold (kWh DC)
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	

⁶ **NTD:** Penalties for failure to meet the Guaranteed Capacity Threshold are described in the Storage Addendum.

Year 9	
Year 10	

B. If at the end of each successive Contract Year the electricity delivered by the City Portfolio as measured and recorded by Seller (the “**Actual Generation**”) is *less* than the Guaranteed Energy Delivered for that Contract Year, then Seller shall pay Purchaser an amount equal to (i) the difference between the Guaranteed Energy Delivered and the Actual Generation, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year.

C. If a payment of greater than \$50 is due under Section 1(B), (i) Seller will deliver a statement to Purchaser detailing the Guaranteed Energy Delivered and the calculation of the payment due and (ii) the payment shall be due within 90 days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

D. “**Performance Guarantee Payment Rate**” means the dollar value per kWh set forth in **Table 1.E** below, which:

	Performance Guarantee Payment Rate
<i>Year 1</i>	
<i>Year 2</i>	
<i>Year 3</i>	
<i>Year 4</i>	
<i>Year 5</i>	
<i>Year 6</i>	
<i>Year 7</i>	
<i>Year 8</i>	
<i>Year 9</i>	
<i>Year 10</i>	
<i>Year 11</i>	
<i>Year 12</i>	
<i>Year 13</i>	
<i>Year 14</i>	
<i>Year 15</i>	
<i>Year 16</i>	
<i>Year 17</i>	
<i>Year 18</i>	
<i>Year 19</i>	
<i>Year 20</i>	
<i>Year 21</i>	
<i>Year 22</i>	
<i>Year 23</i>	
<i>Year 24</i>	

2. **Exclusions.** The Guarantee set forth in Section 1 does not apply to the extent of any reduced generation from the City Portfolio due to the following (including the downtime required for repair, replacement or correction):
 - A. The occurrence of a Force Majeure Event, which includes (i) destruction or damage to any Project under the City Portfolio or such Project’s ability to safely produce electricity not caused by Seller or its approved service providers while servicing the Project (e.g., vandalism), (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the utility, (iii) theft of any Project under the City Portfolio, and (iv) curtailment or reduction of energy production required by the utility or grid operator.
 - B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.
3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the City Portfolio, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the City Portfolio. Purchaser hereby disclaims, and any beneficiary of this Guarantee hereby waives, any warranty with respect to any cost savings from using the City Portfolio.
4. **Incorporation of PPA Provisions.** Section 7 (Force Majeure), Section 19 (Assignment and Financing), and Section 21 (General Provisions) of the General Terms and Conditions and any Sections referenced therein are incorporated into this Guarantee as if any reference therein to “Agreement” were to this Guarantee and any reference to “Parties” were to the Parties to this Guarantee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Guarantee to be executed by their respective duly authorized representatives as of the date set forth below.

<i>SELLER</i>	<i>PURCHASER</i>
<i>[____]</i>	<i>East Bay Community Energy Authority</i>
<i>By: .</i>	<i>By:</i>
<i>Printed Name: _____</i>	<i>Printed Name: Nick Chaset</i>
<i>Title: _____</i>	<i>Title: Chief Executive Officer</i>
<i>Date: _____</i>	<i>Date: _____</i>

Exhibit 4

Storage Addendum

(if selected on Cover Sheet)

This **Exhibit 4** sets forth the terms and conditions related to the operation of the each Storage Project, as contemplated within the Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in the Agreement. Where the inclusion of this addendum is confirmed on the Cover Sheet of the Agreement, the provisions of this **Exhibit 4** will be incorporated thereunder and will be made to have full force and effect under the terms of the Agreement.

1. **Storage Availability.** During the applicable Project Term, each Storage Project shall maintain Monthly Storage Availability during each month (the “**Guaranteed Storage Availability**”). If the Monthly Storage Availability for such Project during any month is less than the requisite 98% threshold, then Purchaser’s payment for the Discharging Energy and Storage Capacity shall be calculated by reference to the applicable Availability Adjusted Storage Contract Capacity.
2. **Calculation of Monthly Storage Availability.**
 - a. Seller shall calculate the “Monthly Storage Availability” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHRS}_m - \text{UNAVAILRS}_m]}{\text{MNTHRS}_m}$$

where:

m = relevant month “m” in which availability is calculated;

“**MNTHRS_m**” is the total number of On-Peak Hours for the month;

“**On-Peak Hour**” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 a.m. to 9:59 p.m.) on Monday through Saturday, Pacific Prevailing Time.

“**UNAVAILRS_m**” is the total number of On-Peak Hours in the month during which the Storage Project was unavailable to deliver Product of the Storage Project for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event or the result of an outage of the Storage Project as provided under the terms of the Agreement. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILRS_m for such month. Any other event that results in unavailability of the Storage Project for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

3. **Availability Adjustment.** The applicable “**Availability Adjusted Storage Contract Capacity**” is calculated by multiplying the Monthly Storage Availability by the Availability Adjustment (“**Availability Adjustment**” or “**AA**”), which is calculated as follows:

- a. If the Monthly Storage Availability is greater than or equal to the 98% threshold, then:

$$AA = 100\%$$

- b. If the Monthly Storage Availability is less than the 98% threshold, but greater than or equal to 80%, then:

$$AA = 100\% - ((98\% - \text{Monthly Storage Availability}) \times 2)$$

- c. If the Monthly Storage Availability is less than 80%, then:

$$AA = 0$$

4. Storage Capacity Tests.

- a. As of the Commercial Operation Date for the applicable Storage Project, Seller shall schedule and complete a Storage Capacity Test. Thereafter, Seller and Purchaser shall have the right to run retests of the Storage Capacity Test.
- i. **Commercial Operation Date Storage Capacity Test.** Upon no less than ten Business Days' prior notice to Purchaser, Seller shall schedule and complete the initial Storage Capacity Test on the applicable Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with the provisions of this **Exhibit 4** and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Project determined by such Storage Capacity Test.
- ii. **Subsequent Storage Capacity Tests.** Following the Commercial Operation Date, but not more than once per Contract Year, upon no less than ten Business Days' prior notice to Seller, Purchaser shall have the right to require Seller to schedule and complete a Storage Capacity Test for such Storage Project. In addition, Purchaser shall have the right to require a retest of the Storage Capacity Test at any time upon no less than ten Business Days' prior written notice to Seller if Purchaser provides data with such notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five Business Days' prior written notice to Purchaser (or any shorter period reasonably acceptable to Purchaser consistent with Prudent Operating Practice).
- iii. **Actual Storage Capacity.** Purchaser shall measure Storage Capacity of each Storage Project daily at 4 o'clock PM Pacific Time. The annual Storage Capacity of each Storage Project shall be calculated as the annual average of the daily Storage Capacity measurements for such Contract Year (such average, the "**Actual Storage Capacity**"). If at the end of each successive Contract Year, the Actual Storage Capacity is less than the applicable Guaranteed Capacity Threshold, Seller shall pay Purchaser an amount equal to (i) the difference between the Guaranteed Capacity Threshold for the Storage Project and the Actual Storage Capacity, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year.

- iv. **Test Results and Re-Setting of Storage Capacity.** In accordance with the terms of this Section 4, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet) shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for calculating the monthly payment for the Discharging Energy and Storage Capacity and all other purposes under this Agreement.
- b. Purchaser shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Such representative(s) shall not interfere with the Storage Capacity Tests. Purchaser shall be responsible for all costs, expenses, and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller.
- c. Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices. Purchaser or its representative may be present for the Storage Capacity Test and may, for informational purposes only, use its own metering equipment (at Purchaser's sole expense).

5. **Storage Contract Capacity Adjustment.**

- a. At any time prior to commencement of construction of the Project or during the Project Term, Purchaser may by written request, request that Seller increase the Storage Capacity and Storage Contract Capacity of the Project up to the forecasted energy generated by the Project during an average day in the first January the Project shall be operational. Upon receipt of such written request, Seller must make commercially reasonable efforts to increase the Storage Capacity of the Project and shall, within ten Business Days of such request, provide notice to Purchaser indicating whether Seller will be able to comply with such request. If Seller indicates that it can comply with such request or fails to indicate a commercially reasonable basis on which it will not comply within such ten Business Day period, all references to Storage Contract Capacity under this Agreement will automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties. If Seller fails to indicate that it can comply with this request, Purchaser may work with third parties to install and finance the expansion of Storage Capacity and Seller must make commercially reasonable efforts to enable such expansion.

Exhibit 5

Insurance Requirements

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of the Purchaser, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverages and provisions. The Parties agree that all insurance coverages required under this Exhibit and Agreement may be met by a combination of Seller and its contractor's total insurance coverages:

1. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the Purchaser. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Seller shall not reduce or limit Seller's contractual obligation to indemnify and defend the Indemnified Parties.
2. **EVIDENCE OF COVERAGE:** Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to Purchaser, evidencing that all required insurance coverage is in effect. The required certificate(s) and endorsements must be sent as set forth in the notices.

The Seller shall not receive a notice to proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the Purchaser. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, insurance policies and coverage(s) written on a claims-made basis:
 - Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/phase of this Agreement and acceptance of all work provided under this Agreement.
 - The retroactive date must be before the execution date of the contract or the beginning of contract work.
 - If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Seller must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.
4. **ADDITIONAL INSURED:** All insurance required herein with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Purchaser or, its elected officials, officers, agents, employees,

volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting “Rights of Entry” for construction of the work shall be covered as insureds under the same coverage as provided the Purchaser as respects their ownership of the property and the work to be done thereon.

5. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the Purchaser. Acceptance of Seller’s insurance by Purchaser shall not relieve or decrease the liability of Seller hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller.
6. **SUBCONTRACTORS:** Seller shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this **Exhibit 5**. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
7. **JOINT VENTURES:** If Seller is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
 - Separate insurance policies issued for each individual entity, with each entity included as a “Named Insured” (covered party), or at minimum named as an “Additional Insured” on the other’s policies.
 - Coverage shall be at least as broad as in the ISO forms named above. Joint insurance program with the association, partnership or other joint business venture included as a “Named Insured”.
8. **NOTICE OF CANCELLATION:**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Purchaser insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the Purchaser or their designated agent.

9. **SELF-INSURANCE:**

Purchaser acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self-insurance shall be approved in writing by Purchaser upon satisfactory evidence of financial capacity. Seller’s obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions. Purchaser acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by Seller under this Agreement.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence – \$2,000,000
- b. General aggregate - \$2,000,000
- c. Personal Injury - \$2,000,000

2. General liability coverage shall include:

- a. Project Sites and Operations
- b. Personal Injury liability
- c. Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

5. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than two hundred fifty thousand dollars (\$250,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

6. Claims Made Coverage

If coverage is written on a claims' made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$2,000,000
 - b. General aggregate - \$4,000,000
 - c. Products/Completed Operations aggregate ** - \$4,000,000
 - d. Personal Injury - \$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:
 - a. Project Sites and Operations
 - b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by Purchaser.
 - c. Contractual Liability expressly including liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.
 - d. Personal Injury liability
 - e. Purchaser's and Seller's protective liability
 - f. Severability of interest
 - g. Explosion, Collapse, and Underground Hazards (X, C and U)

- h. Broad Form Property Damage liability
- 3. General liability coverage shall include the following endorsements, copies of which shall be provided to Purchaser:
 - a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with Purchaser.
 - b. X C & U (Explosion, Collapse and Underground) Endorsement:

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation and testing at the entity's site. The coverage shall be in the amount of the value of the completed project and materials.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the Purchaser, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

- 1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$2,000,000
 - b. General aggregate - \$4,000,000
 - c. Personal Injury - \$2,000,000

2. General liability coverage shall include:

- Project Sites and Operations
- Personal Injury liability
- Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage including broad form all-states coverage.
- Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

Exhibit 6

Security Addendum

(if selected on Exhibit 1)

In consideration for Purchaser’s entrance into the Solar Power Purchase & Battery Energy Storage Services Agreement related to the City Portfolio (the “PPA”), this Security Addendum (the “**Security Addendum**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the PPA.

- a. **Seller’s Term Security.** To secure its obligations under this Agreement, Seller shall deliver to Purchaser evidence that the Term Security has been properly funded in the amount set forth in the table below (“**Term Security Amount**”) by the first day of the tenth (10th) Contract Year. The Seller shall fund, hold, and maintain the Term Security in full force and effect and shall within ten (10) days after any draw thereon replenish the Term Security in the event Purchaser collects or draws down any portion of the Term Security for any reason permitted under the PPA other than to satisfy a Termination Payment, until the following have occurred: (a) the Term has expired or terminated early, and (b) all payment obligations of Seller then due and payable under the PPA, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly through set-off or netting). Following the occurrence of both of the events described in clauses (a) and (b), Seller may withdraw the balance of the Term Security.

Applicable Contract Years	Term Security Amount
Contract Years 0-9	\$0/kW
Contract Years 10-14	\$40/kW
Contract Years 15-19	\$30/kW
Contract Years 20 – expiration of Term	\$25/kW

- b. **Limited Parent Guarantee During Development.** [Ultimate Parent]⁷ warrants and represents that Seller, [____], is an affiliate of [Ultimate Parent]. [Ultimate Parent] hereby guarantees any and all payments and obligations of Seller from the Effective Date through the first Project’s Commercial Operation Date.

[Signature Page Follows]

⁷ **NTD:** If applicable, list name of Ultimate Parent of Seller here.

<p><i>SELLER</i></p> <p>[_____]</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><i>PURCHASER</i></p> <p>[_____]</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p><i>[ULTIMATE PARENT OF SELLER]</i></p> <p>[_____]</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	

Exhibit 7

Reserved

Exhibit 8

City Specific Terms

Appendix A

City 1 Provisions

Appendix B

City 2 Provisions

Appendix C

City 3 Provisions

Appendix D

City 4 Provisions

Exhibit 9

Form of Annual Load Modifying Resource Dispatch Plan- TEMPLATE

BATTERY ENERGY STORAGE DISCHARGE				
Technology Type	Month - Year	Hour Start (HE)	Hour End (HE)	MW per Hour
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				
Storage & PV				

Exhibit 10

Form of Removal Fund Attestation