

## Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this "Agreement") is dated as of [ \_\_\_\_\_ ] (the "Effective Date"), and is witnessed, acknowledged, and executed by authorized representatives of SolEd Solar Holdings I, LLC, a California limited liability company ("Seller"), the managing member of which is SolEd Benefit Corp, a California Benefit Corporation, and the Marinwood Community Services District, California, a CSD within the County of Marin in the State of California ("Purchaser" and, together with Seller, each, a "Party" and together, the "Parties"), as evidenced by their signature on this cover page.

### RECITALS

- A. Purchaser wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Purchaser has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation coordinated by the City of San Rafael;
- C. Seller is in the business of designing, constructing, owning, financing and operating solar photovoltaic electric generating systems for the purpose of selling power generated by the systems to its Purchasers at the lowest practical lifetime cost of clean energy;
- D. Purchaser has selected Seller and its engineering, procurement and construction firm to design, construct, own, finance and operate a solar photovoltaic generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- E. Seller intends to construct, own, and operate renewable energy-powered generating facilities and desires to sell electricity produced by such generating facilities together with Environmental Attributes and Environmental Incentives to Purchaser pursuant to the terms, conditions, covenants and provisions set forth herein; and
- F. Purchaser desires to purchase electricity generated by Seller's generating facility, together with all Environmental Attributes and Environmental Incentives pursuant to the terms and conditions set forth herein;

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

<b>Purchaser:</b>		<b>Seller:</b>	
<b>Name and Address</b>	Marinwood Community Services District 775 Miller Creek Road San Rafael, CA 94903-1323 Attention: Thomas Horne, District Manager	<b>Name and Address</b>	SolEd Solar Holdings I, LLC, c/o SolEd Benefit Corp, Managing Member P.O. Box 151731 San Rafael, CA 94915-1731 Attention: David Kunhardt, CEO
<b>Phone</b>	(415) 479-0775	<b>Phone</b>	(415) 609-7893
<b>Fax</b>	(415) 479-7759	<b>Fax</b>	None
<b>E-mail</b>	thorne@marinwood.org	<b>E-mail</b>	david@sol-ed.com
<b>Premises Ownership</b>	Purchaser [x] owns [ ] leases the Premises, also known as Marinwood Community Center	<b>Additional Seller Information</b>	Seller is a Benefit corporation, incorporated in California in 2013, serving the mission of delivering the lowest lifetime cost of clean energy to public clients.

This Agreement sets forth the terms and conditions of the service contract for purchase and sale of (a) solar generated electric energy from the solar panel system described in **Exhibit 2** (the "System") to be installed at Purchaser's facility described in **Exhibit 2, Attachment A** (the "Facility"). The terms and conditions of this Agreement are provided and intended for use by public agencies affiliated or not affiliated with Purchaser, but with similar procurement and contracting regulations as those of Purchaser.

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

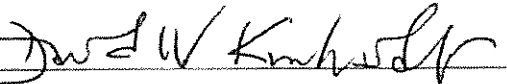
<u>Exhibit 1</u>	Basic Terms and Conditions
<u>Exhibit 2</u>	System Description
<u>Exhibit 3</u>	Credit Information
<u>Exhibit 4</u>	General Terms and Conditions
<u>Exhibit 5</u>	Form of Memorandum of License
<u>Exhibit 6-1</u>	Engineering and Construction Requirements
<u>Exhibit 6-2</u>	Equipment Warranties
<u>Exhibit 7</u>	Form of Attestation
<u>Exhibit 8</u>	Milestone Schedule
<u>Exhibit 9</u>	Insurance Requirements
<u>Exhibit 10</u>	Seller and Purchaser Agreed Responsibilities

Purchaser: Marinwood Community Services District

Seller: SolEd Solar Holdings I, LLC

By: SolEd Benefit Corp, Managing Member

Signature: 

Signature: 

Printed Name: Thomas D. Horne

Printed Name: David W. Kunhardt

Title: District Manager

Title: President & CEO

Date: OCTOBER 27, 2014

Date: 27 Oct. 2014

**Exhibit 1**

**Basic Terms and Conditions – Site: See Below**

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date, as defined in **Exhibit 4, Section 3(a)**.
2. **Additional Terms:** Up to two (2) optional Additional Terms of five (5) years each.
3. **Environment Attributes:** Accrue to Purchaser.
4. **Environmental Incentives:** If applicable, to be directly paid over, or credited to, Purchaser as soon as received.
5. **Contract Price (Discounted):**

Site	Community Center
Contract Year	\$/kWh
1	0.1911
2	0.1959
3	0.2009
4	0.2059
5	0.2110
6	0.2163
7	0.2217
8	0.2272
9	0.2329
10	0.2388
11	0.2447
12	0.2508
13	0.2571
14	0.2635
15	0.2701
16	0.2431
17	0.2188
18	0.1969
19	0.1772
20	0.1595

6. **Condition Satisfaction Date:** As set forth in **Exhibit 4, Sections 6(a) and 6(b)**.
7. **Anticipated Commercial Operation Date:**

Site	Community Center	
Commercial Operation Date		

8. Purchaser Options to Purchase System.  None  or as set forth in Exhibit 4, Section 16(b).

9. System Installation:

Includes:	<p><input checked="" type="checkbox"/> Design, engineering, permitting, interconnection application and completion, installation, prevailing wage construction, monitoring and communication, rebate and permit application and paperwork processing, and final commissioning of the completed System, complete and accurate As-Built design documents, copies of executed module, inverter, and system workmanship warranties, and Operations and Maintenance services Agreement, as described in <u>Exhibit 6-1</u> (Engineering and Construction Requirements), and additional items for which Seller has agreed to be responsible as set forth on <u>Exhibit 10</u>.</p> <p><input checked="" type="checkbox"/> 10-year Limited Warranty on workmanship and inverters, 25-year Warranty on PV modules.</p> <p><input checked="" type="checkbox"/> List of Approved Subcontractors</p> <p><input type="checkbox"/> Any like substantive equipment, in the sole discretion of Seller.</p> <p><input type="checkbox"/> State or Utility Rebate, if any.</p> <p><input checked="" type="checkbox"/> Proof of lien-free construction will be provided.</p> <p><input checked="" type="checkbox"/> Interactive Display for Generating Facilities. If this item is checked, the provisions of <u>Exhibit 4, Section 12(b)</u> shall apply.</p>
Excludes:	<p>Payment bonds, performance bond(s), tree removal and tree trimming, groundwork, upgrades or repair to the Facility or utility electrical infrastructure for which Purchaser has agreed to be responsible as set forth on <u>Exhibit 10</u>. To the extent of any conflict between this paragraph and <u>Exhibit 10</u>, the provisions of <u>Exhibit 10</u> shall govern.</p>

**Exhibit 2**  
**System Description**

1. **System Location:** Listed Below
2. **System Size (DC kW):**

Site	Community Center
System Size (kW-DC-STC)	80.925

3. **Expected Contract Quantity (kWh):**

**Initial Year Expected Quantity of Energy**

Site	Community Center
Month	(kWh/Month)
January	5180
February	6705
March	9856
April	11783
May	13378
June	14131
July	14720
August	13408
September	11535
October	8549
November	5807
December	5283

**Annual Expected Quantity of Energy**

Site	Community Center
Contract Year	(kWh/Year)
1	120,334
2	119,733
3	119,134
4	118,538
5	117,946
6	117,356
7	116,769
8	116,185
9	115,604
10	115,026
11	114,451
12	113,879
13	113,310
14	112,743
15	112,179
16	111,618
17	111,060
18	110,505
19	109,953
20	109,403

4. **Expected Structure:**  Ground Mount  Roof Mount  Parking Structures  Other: Elevated structures over concrete pool area

5. **Expected Module(s):**

Site	Manufacturer/Model	Quantity
Community Center	Suniva OPT 325	249

6. **Expected Inverter(s):**

Site	Manufacturer/Model	Quantity
Community Center	SMA 11000	1
	SMA 9000	4
	SMA 7000	2

7. **Expected Monitoring Provider:**

Site	Manufacturer/Model	Quantity
Community Center	Also Energy DECK	2

8. **Expected Car Charging Station Provider:**

Site	Manufacturer/Model	Quantity
Community Center	N/A	N/A

- 9. **Facility and System Layout:** See Exhibit 2, Attachment A
- 10. **Utility:** Pacific Gas & Electric Co. and Marin Clean Energy, as applicable
- 11. **Current & Proposed Utility Tariff:**

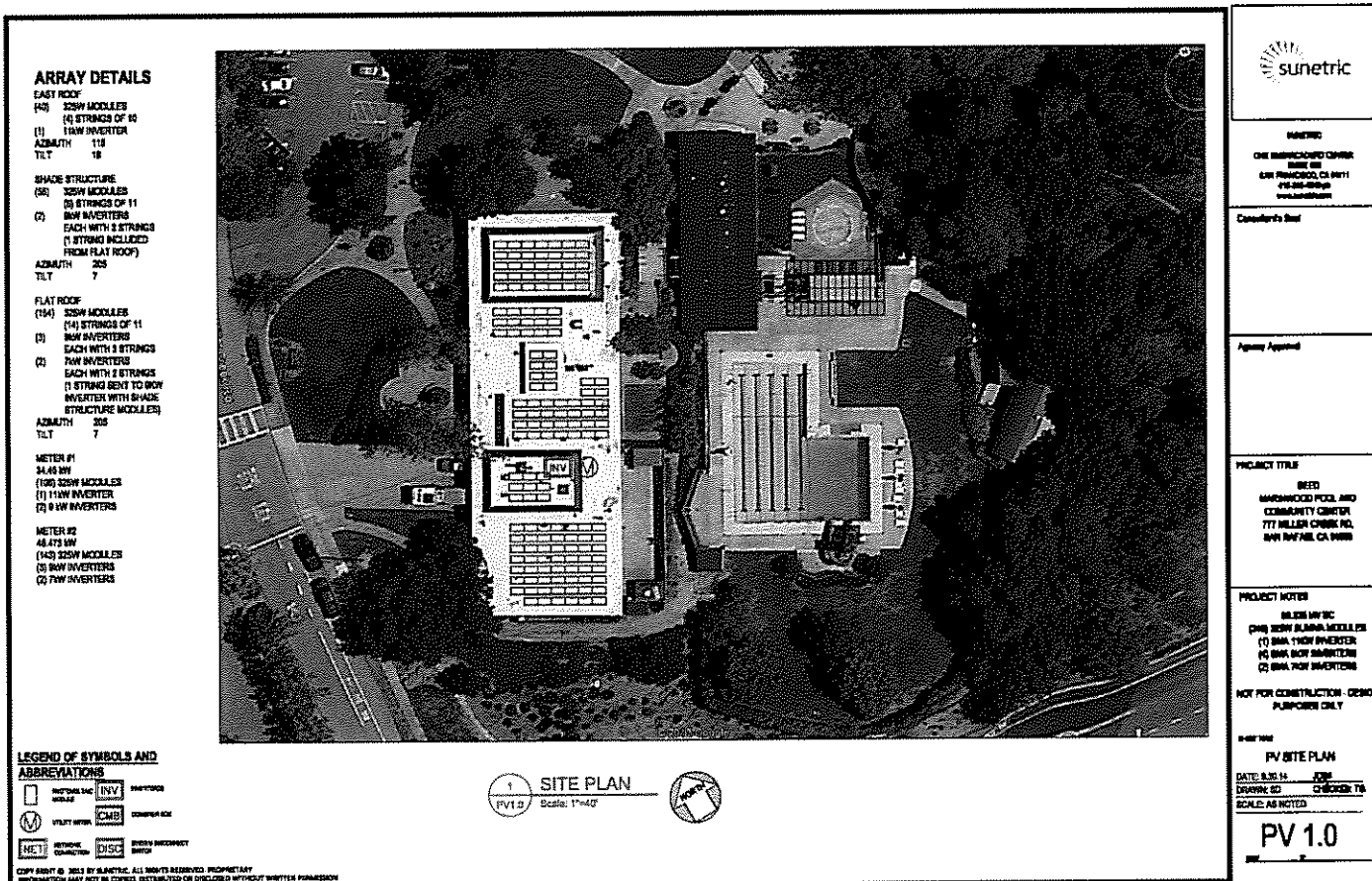
Site	Current PG&E	Proposed
Community Center	A-6	A-6

- 12. **Warranties:** (i) Warranty for the performance of the System set forth in Section 7(m); (ii) Warranty for meter accuracy set forth in Exhibit 4, Section 12(a); and (iii) Equipment warranties set forth in Exhibit 6-2, executed copies of which will be submitted at construction completion with As-Built documentation.

**Exhibit 2**  
**Attachment A:**  
**Facility and System Layout**

Aerial Photograph of the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	See below
Access Point(s)	Typical access for all sites will be necessary for installation and service of systems. This includes but is not limited to the following: roof access, parking lot access, electrical room access, data room access.

**Community Center**





**Exhibit 3  
Credit Information**

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
Name: Marinwood Community Services District						Tax ID:	
Previous & Other Names: N/A				Website: <a href="http://www.Marinwood.org">http://www.Marinwood.org</a>			
Office Address: 775 Miller Creek Road							
City, State, Zip San Rafael, CA 94903-1323							
Phone Number: 415-479-0775				Fax Number: 415-479-7759			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other City
Property Address for Solar Installations: 1) Community Center 775 Miller Creek Rd			State: CA	Zip Code: 94903	Property Owned by Applicant ✓ YES NO		
Property Type	Insurance Agent Name		Agents Phone:		Name of Property Owner if Not Applicant N/A		

INFORMATION REQUESTED	
<u>Corporate Records</u>	
<input type="checkbox"/> Not Applicable	
<u>Financial Statements</u>	
<input type="checkbox"/> Public Agency Records. See audit reports, at: <a href="http://www.marinwood.org/about-us/board-documents">http://www.marinwood.org/about-us/board-documents</a> <u>Real Estate Documents</u>	
<input type="checkbox"/> Not Applicable	
Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.	

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller is an equal opportunity service provider.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit 4**  
**Solar Power Purchase Agreement**  
**General Terms and Conditions**

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
  
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System (the "Energy") for each Contract Year during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "Term"), up to 110% of Expected Contract Quantity for each Contract Year set forth on **Exhibit 2**. Purchaser shall have the option, but not the obligation, to purchase the Energy in excess of 110% of the Expected Contract Quantity. Seller will first offer any Energy beyond the 110% cap to Purchaser and, only if Purchaser does not exercise its option to purchase all or a portion of such excess Energy, Seller shall be permitted to resell the excess Energy, provided such sale is in accordance with all applicable laws. Energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the "Delivery Point"). Purchaser shall take title to the Energy at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if Purchaser's electric requirements at the Facility exceed the Energy generated by the System. Any delivery of Energy prior to the Commercial Operation Date shall be treated as limited amounts of test energy only and shall not indicate that the System has been put in commercial operation, and Purchaser shall not be under obligation to pay for such test energy. Seller shall deliver to Purchaser the Energy at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto, by any person. For the avoidance of doubt, Seller's obligation to deliver Energy unencumbered shall not in any way affect Seller's ability to grant a security interest in or otherwise encumber the System in accordance with the terms of this Agreement. "Contract Year" means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.
  
3. **Term and Termination.**
  - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. Following Purchaser's inspections pursuant to Section 7(c)(iii) below, the "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) business days of the date of receipt of such notice. Upon submittal of the notice, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor, including signed Building Inspection card, and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the "Utility"), as set forth on **Exhibit 2**. The notice shall also include commissioning test results. This Agreement is effective as of the Effective Date and, subject to the provisions of **Section 18** below, Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing under this Agreement shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
  
  - b. **Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, Purchaser may give Seller written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an "Additional Term"). Such notice shall be given, if at all, not more than three hundred sixty five (365) days and not less than ninety (90) days before the last day of the Initial Term or the then current Additional Term, as applicable. If Purchaser delivers such notice, the Parties shall promptly meet and confer to discuss and agree upon the (i) Expected Contract Quantity, (ii) Contract Price for Contract Years 2-5 of the Additional Term and (iii) Termination Payment applicable for each Contract Year of such

Additional Term. The Parties agree that the Contract Price applicable during the first Contract Year of any Additional Term shall be the same as the Contract Price in effect during the last Contract Year of the Initial Term or prior Additional Term, as applicable. If Seller and Purchaser successfully agree on such terms within sixty (60) days of the date such notice is delivered by Purchaser, Purchaser and Seller shall enter into an amendment to this Agreement which shall state the mutually agreed upon Expected Output Quantity, Contract Price and Termination Payment applicable for each Contract Year of the Additional Term and confirm that all other terms of this Agreement shall continue unchanged in full force and effect. If the Parties are unable to agree on such terms during such sixty (60) day period despite the Parties good faith efforts to reach agreement, Seller shall be deemed to have rejected the offer for an Additional Term. The Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term and this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

**c. Termination.**

- i. Prior to Commencement of Construction. Purchaser may terminate this Agreement at any time upon written notice prior to Seller's delivery of full notice to proceed to contractor by Seller. Upon such termination, Purchaser shall reimburse Seller for all reasonable documented out-of-pocket costs incurred by Seller in connection with its diligence, investigations, and the design, engineering, permitting and procurement of materials for the System ("**Design Cancellation Payment**") as evidenced by the submission of engineering and design drawings in accordance with the Milestone schedule on **Exhibit 8** and other reasonable supporting documentation; provided, if such termination occurs (A) prior to the date that System engineering and design drawings are 50% complete, the Design Cancellation Payment shall not exceed Five Thousand and 00/100 Dollars (\$5,000), (B) prior to the date that System engineering and design drawings are 90% complete, the Design Cancellation Payment shall not exceed Nine Thousand and 00/100 Dollars (\$9,000), and (C) prior to the date that System engineering and design drawings are 100% complete, the Design Cancellation Payment shall not exceed Fifteen Thousand and 00/100 Dollars (\$15,000). Purchaser's payment to Seller of the Design Cancellation Payment shall be Seller's sole and exclusive remedy for such termination.
- ii. Following Commencement of Construction. Purchaser may terminate this Agreement at any time after Seller's delivery of full notice to proceed to the contractor upon thirty (30) days prior written notice to Seller. In the event of termination by Purchaser after the delivery of full notice to proceed by Seller, Purchaser shall pay to Seller the applicable Termination Payment set forth in **Exhibit 4, Attachment A**, and Seller shall, at its expense, cause the applicable System to be disconnected and removed from the Facility and remediate and restore the Facility in accordance with Seller's obligations in **Section 11**. Notwithstanding the foregoing, Purchase shall not be obligated to pay the Termination Payment in the event Purchaser terminates this Agreement due to (i) the failure of Purchaser's Conditions Precedent pursuant to **Section 6(c)**; (ii) Seller's Default pursuant to **Section 13(b)**; or (iii) a Force Majeure event pursuant to **Section 18(d)**.

**4. Billing and Payment.**

- a. Monthly Charges. Purchaser shall pay Seller monthly for the Energy delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "**Contract Price**") for the current Contract Year. The first Contract Year shall start on the Commercial Operation Date, and each succeeding Contract Year shall begin on the succeeding anniversary of the Commercial Operation Date. The monthly payment for such Energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of Energy generated during the applicable month, as measured by the System Meter.
- b. Monthly Invoices. Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of Energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar (\$25) handling charge will be added to each invoice.
- c. Taxes. Seller shall either pay or reimburse Purchaser for any and all Taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property Taxes on the System; provided, however, Seller will not be required to reimburse Purchaser or otherwise pay for (i) any Taxes during periods when Seller fails to deliver

electric energy to Purchaser as a result of Purchaser's gross negligence, willful misconduct or breach of this Agreement by Purchaser or (ii) any Taxes which are imposed by any applicable law or regulation made effective after the Effective Date. Notwithstanding the foregoing, Seller shall be exempt from any tax, fee, levee or other charge now or hereafter assessed by Purchaser related to or applicable to energy use and/or sale. For purposes of this Section 4(c), "Taxes" means any federal, state and local ad valorem, income, property, possessory interest, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges.

- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. If payment is not received within the thirty (30) day period, the Party to whom payment is due (a "payee") shall send notice of past-due amount. After the payee sends such notice, any undisputed portion of the invoice amount not paid within the following thirty (30) day period shall accrue interest at the annual rate of the prime rate plus two percent (2%) (but not to exceed the maximum rate permitted by law).

5. **Tax Credits, Environmental Attributes and Environmental Incentives.**

- a. **Ownership of Tax Credits, Environmental Attributes and Environmental Incentives.** Seller, as owner of the energy generating equipment, is the owner of all Tax Credits and other tax attributes of ownership, and Purchaser shall cooperate with Seller in perfecting such ownership. Seller acknowledges that Purchaser has made no statements, representations or warranties regarding the eligibility of the System for the Tax Credits, and Seller is not relying on any statement, representation or warranty by Purchaser or any third party with respect to the Tax Credits in entering into this Agreement. As specified on Exhibit 1, Purchaser is the owner of all Environmental Attributes and any applicable Environmental Incentives. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives (as agreed by the Parties) to Purchaser. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller.
- b. **Transfer of Environmental Attributes.** Throughout the Term, Seller shall transfer to Purchaser, and Purchaser shall receive from Seller, all rights and interest in and to the Environmental Attributes and any applicable Environmental Incentives, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Energy purchased by Purchaser from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes and any applicable Environmental Incentives available to Purchaser immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of such Environmental Attributes or Environmental Incentives. Seller agrees that the Contract Price, as applicable, is the full compensation for all Environmental Attributes and any applicable Environmental Incentives (except as otherwise agreed by the Parties).
- c. **No Transfer to Third Parties.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes or Environmental Incentives to any person other than Purchaser.
- d. **Reporting.** Seller shall take such actions as are reasonably necessary to ensure that the Environmental Attributes are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Purchaser. During the Term, Seller shall not report to any person that the Environmental Attributes granted hereunder to Purchaser belong to anyone other than Purchaser, and Purchaser may report under any program that such attributes purchased hereunder belong to it.
- e. **Attestation.** On or shortly after the final day of each Contract Year, Seller shall document the transfer of Environmental Attributes and any applicable Environmental Incentives to Purchaser under this Agreement by delivering to Purchaser an attestation of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 7, which Form of Attestation may be updated or changed by Purchaser with Seller's prior written approval, not to be unreasonably withheld, as necessary to ensure that Purchaser receives full and complete title to, all of the Environmental Attributes and any applicable Environmental Incentives purchased hereunder.
- f. **Documentation.** At Purchaser's option, the Parties, each at their own expense, shall execute all such documents and instruments in forms reasonably approved by the Parties in order to affect the transfer of the Environmental Attributes specified in this Agreement and any applicable Environmental Incentives to Purchaser or its designees, as Purchaser may reasonably request. Upon notification by WREGIS or any successor EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable

actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to WREGIS or any successor EA Agency to effectuate any transfers. From and after Seller's transfer of Environmental Attributes or any applicable Environmental Incentives to Purchaser, Seller will have no obligation, risk, liability or benefit to, from or arising out of such Environmental Attributes or as a consequence of Purchaser's determination to keep, sell, or retire any such Environmental Attributes.

g. **Defined Terms.** As used in this Section 5 the following definitions shall apply:

**"EA Agency"** means any Governmental Authority that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, for example, the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.

**"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (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), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing 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. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, Renewable Energy Credits or certificates, emissions reduction credits, emissions allowances, Green Tag Reporting Rights, tradeable renewable credits and Green-e® products.

**"Environmental Incentives"** means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity or any Governmental Authority.

**"Governmental Authority"** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

**"Tax Credits"** means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

**"WREGIS"** means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

6. **Conditions to Obligations.**

- a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in Section 6(c) below, are conditioned on the completion of the following conditions (collectively **"Seller's Conditions Precedent"**) to Seller's reasonable satisfaction on or before the date specified below (each a **"Condition Satisfaction Date"**):

On or before the date that is sixty (60) days following the Effective Date:

- i. Completion of physical inspections of the Facility and the property upon which the Facility is located (the “Premises”) including, if applicable, geotechnical work, title review, inspections of electrical systems and infrastructure, and other real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Receipt of an executed financing commitment for the construction of the System from a Financing Party (“Financing Term Sheet”);
- iii. Approval of (A) this Agreement and (B) the Construction Agreement for the System by Seller’s Financing Parties. “Construction Agreement” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

On or before the date that is one hundred eighty (180) days following the Effective Date:

- iv. Receipt of all necessary zoning, land use and building permits necessary to construct and operate the System; including without limitation, receipt of Purchaser’s notice to proceed under CEQA (as defined below) pursuant to Section 6(b)(iv) below and a fully executed CEQA Cost Sharing Agreement (as defined below) if applicable;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility’s electric distribution system; and
- vi. Prior to Seller commencing construction and installation of the System, Seller shall have received (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, and (B) written confirmation in recordable form acceptable to Seller and Seller’s Financing Parties from any person or entity holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller’s rights under this Agreement for as long Seller is not in default hereunder.

The Seller’s Conditions Precedent set forth in this Section 6(a) are solely for the benefit of Seller and may only be waived or deemed satisfied by Seller in Seller’s sole but reasonable discretion.

- b. **Conditions to Purchaser’s Obligations.** Purchaser’s obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in Section 6(c) below, are conditioned on the completion of the following conditions (collectively, the “Purchaser’s Conditions Precedent”) to Purchaser’s reasonable satisfaction on or before the date specified below (each, a “Condition Satisfaction Date”):

Purchaser’s obligations under Section 4(a) of this Agreement are conditioned upon the following:

- i. The occurrence of the Commercial Operation Date on or before the Anticipated Commercial Operation Date set forth on Exhibit 1;

Purchaser’s obligations under this Agreement other than under Section 4(a) of this Agreement are conditioned upon the following occurring on or before the date that is one hundred eighty (180) days following the Effective Date:

- ii. Purchaser shall have received a copy of the Financing Term Sheet;
- iii. Purchaser shall have received proof of insurance for all insurance required to be maintained by Seller under this Agreement;
- iv. Purchaser shall be in compliance with the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000 *et seq.* to Purchaser’s reasonable satisfaction. Seller shall not have any right to install the System until Purchaser has fully complied with CEQA, issued a statement to Seller attesting to the fact that Purchaser has fully complied with CEQA as it relates to the System, and issued a notice to proceed to Seller. Purchaser expects to satisfy the CEQA requirements with a Notice of Exemption for each project. If Purchaser, in its discretion, determines that a mitigated negative declaration (“MND”) or environmental impact report (“EIR”) is required to comply with CEQA, then Purchaser shall, within thirty (30) days of such determination, provide Seller with a written statement detailing the reasons that Purchaser believes

that MND or EIR is required to comply with CEQA, the estimated cost to comply with CEQA for the System, and a statement that it will or will not pay for the estimated cost to comply with CEQA for the applicable System. If Purchaser declines to pay for all of the estimated costs to comply with CEQA, Purchaser may negotiate with Seller to share such costs and any agreement reached by the Parties to share such cost shall be in writing, duly executed by the Parties (a “CEQA Cost Sharing Agreement”); and

- v. Purchaser’s reasonable approval of the Construction Agreement; provided, Purchaser may only withhold its approval of the Construction Agreement if the terms and conditions of the Construction Agreement directly conflict with the terms and conditions of this Agreement.

The conditions precedent set forth in this Section 6(b) are solely for the benefit of Purchaser and may only be waived or deemed satisfied by Purchaser in Purchaser’s sole but reasonable discretion.

- c. **Failure of Conditions.** If any of the conditions set forth in Section 6(a) or Section 6(b) are not waived or deemed satisfied by the Party benefited by such condition on or before the applicable Conditions Satisfaction Date, the Parties will meet and confer in good faith to negotiate an extension of the applicable Conditions Satisfaction Date; with each Party agreeing that it will not unreasonably withhold its approval of a proposed extension requested by the other Party. If the Parties are unable to agree upon the extension of any Conditions Satisfaction Date within twenty (20) days following the expiration of the applicable Conditions Satisfaction Date despite their good faith efforts, then the Party benefited by the condition that has not been satisfied or waived by the applicable Conditions Satisfaction Date may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement other than as set forth below. For the avoidance of doubt, if Purchaser terminates the Agreement pursuant to the terms of this Section 6(c), no Termination Payment or Design Cancellation Payment shall be payable by Purchaser hereunder. Each Party hereby covenants and agrees to use commercially reasonable and diligent efforts to cause the conditions precedent to such Party’s obligations to be satisfied prior to applicable Conditions Satisfaction Date specified.

## 7. **Seller’s Rights and Obligations.**

- a. **Generally.** Seller shall develop, construct, finance, own, maintain and operate the System in accordance with this Agreement, all requirements of applicable law, all permits and governmental approvals, the Current Utility Tariff and/or Proposed Utility Tariff, as applicable, and Prudent Industry Practice. “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering, construction and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.
- b. **Permits and Approvals.** Seller, with Purchaser’s reasonable cooperation, shall use commercially reasonable efforts to obtain, maintain, comply with and, as necessary, renew and modify from time to time, at its sole cost and expense:
  - i. any zoning, land use and building permits required to construct, install and operate the System; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility’s electric distribution system.
- c. **Engineering and Construction Requirements.** All elements of design, engineering and construction of the System are Seller’s responsibility. Seller shall design, engineer and construct the System in accordance with the engineering and construction requirements set forth on Exhibit 6-1 hereto (the “Engineering and Construction Requirements”) and timelines for milestones set forth on Exhibit 8 (the “Milestones”).
  - i. **Design Acceptance.** By the applicable Milestone date set forth on Exhibit 8, Seller shall provide Purchaser with a complete design and engineering plan, including blueprints, plans, engineering drawings, specifications and structural reports for the System (the “Design Plans”) for Purchaser’s review. Within thirty (30) days of receiving such plans, Purchaser shall provide Seller with (i) a letter accepting Seller’s proposed Design Plans for the System, or (ii) a report explaining why the System cannot meet the structural

support and weight standards that Purchaser provided to Seller; provided that if Seller does not receive a letter or a report within such thirty (30) day period, Purchaser shall be deemed to have accepted Seller's proposed Design Plans. If Purchaser delivers to Seller the report described in clause (ii) above, Seller shall revise the Design Plans so that the System meets the structural support and weigh standards of the Facility and resubmit the Design Plans to Purchaser for approval within thirty (30) days of receipt of such report. Such resubmission shall restart the Design Plan acceptance process pursuant to this Section 7(c)(i); provided, Purchaser shall provide Seller with a letter accepting Seller's revised Design Plans for the System, or a report explaining why the System cannot meet the structural support and weight standards provided by Purchaser within fifteen (15) days of Seller's resubmittal. Notwithstanding the foregoing, Seller shall not be permitted to commence construction of the System until it has received a notice to proceed from Purchaser in accordance with Section 6(b)(iii).

- ii. **Milestones.** Seller shall diligently pursue completion of all Milestones by the required dates set forth on Exhibit 8. The Parties agree that time is of the essence in connection with the completion of the System, and that Milestones for the development, financing and construction of the System must be achieved in a timely fashion. Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify Purchaser in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may have on any other Milestone, and the measures to be taken to mitigate such impact.
- iii. **Mechanical Completion and Substantial Completion.** Seller shall notify Purchaser when full notice to proceed is issued to the contractor. Seller shall provide Purchaser with a copy of any certificate of mechanical completion or certificate of substantial completion from the contractor promptly following receipt thereof. Upon receipt of such certificate, Purchaser shall schedule an inspection of the System for a date, mutually agreeable to Seller and Purchaser, which is within ten (10) business days following Purchaser's receipt of the certificate of substantial completion or mechanical completion for the System. Following Purchaser's inspection of the System, Purchaser may, within five (5) business days of the inspection, prepare and provide to Seller a list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement or the Construction Agreement. If Seller disputes any items on Purchaser's list, the Parties shall promptly meet and confer in a good faith effort to resolve any such disputes. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by Purchaser, and shall provide a written response to Purchaser setting forth the actions taken in response to such items or explaining why no action is necessary. If requested by Purchaser, Seller shall schedule and arrange a follow-up inspection for Purchaser and Seller after all items on Purchaser's list are resolved. For the avoidance of doubt, such items shall be corrected without cost to Purchaser. All items identified by Purchaser, except those items specifically excepted by mutual agreement between Purchaser and Seller, shall be completed before Seller accepts the certificate of mechanical completion or certificate of substantial completion, as applicable.
- iv. **Reporting.** Seller shall provide bi-weekly (i.e. every other week) reports to Purchaser detailing the status of the design, engineering and construction of the System and Seller's progress in achieving the Milestones. Following the completion of the construction of the System, Seller shall deliver Purchaser a copy of As-Built drawings and copies of all executed warranties relating to the System. Seller will create, maintain and provide to Purchaser minutes of meetings between the representatives of Seller and Purchaser during the design, engineering and construction phase of the System. "**As-Built**" shall mean final record drawings based on redlines from the field reflecting the System as constructed.
- v. **Force Majeure Event.** In the event that a Force Majeure event causes any delay in the achievement of a Milestone by the date set forth in Exhibit 8, such Milestone's deadline shall be extended, together with any Force Majeure event extensions for other Milestones, for a period not to exceed twelve (12) months in the aggregate. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure events for any or all of the Milestones exceed twelve (12) months. In the event the combined extensions for Force Majeure events for any or all Milestones exceeds twelve (12) months (but not prior to such time), Purchaser shall be permitted to exercise its rights pursuant to Section 18(d).



- vi. **Waiver of Right.** Purchaser may, at its discretion, grant extensions for Milestones or waivers for Seller's failure to meet any of the Milestones, but in no way shall any such extension or waiver constitute a waiver of any future failures by Seller to meet other Milestones. For the avoidance of doubt, Purchaser's consent to extensions of the Milestones pursuant to Section 7(c)(v) shall not be required.
- d. **Standard System Repair and Maintenance; Repair of Facility.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to (including replacement of), and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Purchaser, its employees, agents, contractors (other than Seller or Seller's contractors and subcontractors) or consultants (together with Purchaser, collectively, the "**Purchaser Parties**" and individually, a "**Purchaser Party**"). If the System is damaged or destroyed other than by the negligence or willful misconduct of any Purchaser Party, Seller shall promptly repair and restore the System to its pre-existing condition, subject to the provisions of this Section 7(d) and Section 15(a) below. The cost to repair, replace or restore any portion of the System due to the negligence or willful misconduct or breach of this Agreement by any Purchaser Party shall be paid by Purchaser. Seller and Purchaser shall use commercially reasonable efforts to coordinate scheduling of regular maintenance to minimize impacts to Facility operations and maximize System output of Energy during the months of May through October. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Seller shall cause its contractor prepare a written estimate of the cost to make such repairs or replacements, calculated using standard market rates, and such repairs and replacements shall be made by Seller's contractor at Purchaser's sole cost and expense. If, based on the estimated cost of such replacement or repairs, Purchaser does not wish to have the System repaired or replaced, Purchaser may elect to terminate this Agreement pursuant to Section 3(c). Seller and any Financing Party may nullify such termination notice by written notice to Purchaser delivered on or before the expiration of such thirty (30) day period stating that Seller or the Financing Party has elected to pay for the cost of such replacement or repairs in excess of any insurance proceeds available from any insurance policy issued to Purchaser (which for purposes of clarification does not include Purchaser's self-insurance pool) by a third party insurance carrier (such carrier, a "**Third Party Insurance Carrier**" and such policy, a "**Third Party Insurance Policy**") which covers such loss or damage. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs. Seller shall promptly notify Purchaser of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Purchaser shall cooperate with Seller in good faith to cause proceeds from any Third Party Insurance Policy to be available to cover the cost of repairs to the System for which Purchaser is responsible to the extent such loss or damage is covered under the terms and conditions of such Third Party Insurance Policy.
- e. **Breakdown Notice.** Seller shall notify Purchaser as soon as practicable and in any event within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.
- f. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall, for a total of forty-eight (48) daylight hours per calendar year during the Term, be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser. Purchaser shall not be obligated to pay for lost energy production due to (a) Seller system maintenance or repair pursuant to Section 7(d), unless such maintenance and repair is necessitated due to damage caused by the negligence, willful misconduct or breach of this Agreement by any Purchaser Party or (b) a Purchaser Scheduled Outage pursuant to Section 8(e) unless and except to the extent a Purchaser Scheduled Outage exceeds a total of forty-eight (48) daylight hours per calendar year (other than due to a Force Majeure event); provided, that Seller must notify Purchaser of any scheduled suspension at least forty-eight (48) hours in advance of the commencement of such scheduled suspension. In the event that suspensions exceed a total of forty-eight (48) daylight hours per calendar year for a reason other than a Force Majeure event or Purchaser's breach of this Agreement, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess suspensions and shall pay Purchaser an amount equal to the sum of the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably

expected production of the System during such excess suspensions and the payment of such amount by Seller to Purchaser shall be Purchaser's sole and exclusive remedy for such interruption.

- g. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors and shall require all contracts with all contractors and subcontractors to contain a provision requiring compliance by such contractor or subcontractor with this Agreement and naming Purchaser as a third party beneficiary (though Purchaser assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to contractors or subcontractors). A list of pre-approved contractors and subcontractors to be used for construction of the System shall be scheduled on **Exhibit 4, Attachment B.** All contractors and subcontractors to be used for the construction of the System, other than those that may be scheduled on **Exhibit 4, Attachment B.**, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.
- h. **Liens and Payment of Contractors and Suppliers.** Seller shall not directly or indirectly cause, create, include, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the Facility, the Premises or any interest therein; provided, Seller shall be entitled to finance the System and assign its interest under this Agreement and the License granted hereunder pursuant to **Section 19** below. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall promptly notify Purchaser in writing of the existence of any lien and promptly cause the same (other than Seller's liens for non-payment by Purchaser) to be discharged and released of record without cost to Purchaser. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any such liens filed against the Facility or the Premises; **provided, however,** that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- i. **OSHA Compliance.** Seller shall ensure that all Occupational Safety and Health Act ("OSHA") requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
- j. **Security.** Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the System against known risks and risks that should have been known by Seller. Seller will not conduct activities on, in or about the System that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility or the Premises.
- k. **Records.** Seller shall maintain any and all documents and records which demonstrate performance under this Agreement, 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 (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon five (5) days prior written request by a designated representative of Purchaser. Seller shall not charge Purchaser for Purchaser's inspection of records; provided, Purchaser shall pay any copying or other reproduction costs and for the cost of any audit made at Purchaser's election. Seller shall provide copies of such documents to Purchaser for inspection at Seller's office or at such place as Seller maintains such records at a time that is mutually acceptable to Purchaser and Seller. Where Purchaser has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Seller's business, Purchaser may, by written request by any of the above-named officers, require that custody of Seller's documents be given to Purchaser. Seller shall comply with Purchaser's reasonable written request.
- i. **Contractor's Warranties; Cooperation.** Subject to the Financing Party's rights pursuant to **Section 19** below, if Seller fails to replace or repair the System as required pursuant to **Section 7(d)** above, and such failure continues for more than thirty (30) days following Purchaser's written notice to Seller, Purchaser shall have the right, at Seller's cost and expense, to enforce the terms and conditions of any warranty issued to Seller in connection with the System and Seller shall take all reasonable action necessary to enable Purchaser to enforce the terms and conditions of such

warranties. Seller shall cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract between Seller and its general contractor Sunetric and supplier Danlin Solar. Seller shall use commercially reasonable efforts to cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract with any other subcontractor or material supplier. Seller shall, and shall cause its contractors and subcontractors to, work with Purchaser's existing roofing contractors and manufacturers to ensure original roof warranties, if applicable, stay in effect while the System is installed and operating. The Parties acknowledge that cooperation by Purchaser's existing roofing contractors will be required to maintain original roof warranties. Should existing roofing contractors be unwilling to maintain original roof warranties, Seller will inform Purchaser of such fact in writing, and Purchaser will advise Seller on how to proceed.

- m. **Energy Delivery.** Beginning on the Commercial Operation Date, the System shall produce not less than ninety percent (90%) of the applicable Expected Contract Quantity for any given Contract Year as adjusted for Abnormal Weather Conditions, measured on a rolling, three (3) year cumulative basis, unless, and then only to the extent that, the failure to satisfy the Expected Contract Quantity for a given Contract Year is due to (a) Facility failure, damage or downtime attributable to third parties (other than Seller's contractors and subcontractors); (b) general utility outages or any failure of an applicable electric grid; (c) a Force Majeure Event; or (d) Purchaser's failure to satisfy its obligations hereunder. "Abnormal Weather Conditions" shall mean weather conditions which were abnormal for the period of time and could not have been reasonably anticipated, as substantiated with documentation including U. S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station, which such ten-year average will be the basis for determining the number of adverse weather days that could have been reasonably and normally anticipated by Seller. Subject to the terms and conditions of this Agreement, beginning within sixty (60) days of the third anniversary of the Commercial Operation Date and for every Contract Year thereafter, if the delivered Energy of such System for the three (3) year period prior to such anniversary does not equal or exceed ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, Seller will credit Purchaser on its net invoice, an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for the current Utility rate schedule (after taking into consideration adjustments for time of use) during such three (3) year period minus the Contract Price hereunder, multiplied by (ii) the difference between the Energy for such three (3) year period and ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, less any credit previously given covering the same period. This performance guarantee shall remain in place for twenty (20) years from the Commercial Operation Date.
- i. **Limitations.** Pursuant to this Section 7(m), the Parties recognize and agree that (a) payment or credit of amounts by Seller to Purchaser is an appropriate remedy, (b) that the amount credited or paid in any year shall not exceed an amount equal to Twenty Five Dollars (\$25.00) per DC kW of System size (the "Production Guaranty Cap"), (c) any such payment or credit does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs of Purchaser under the terms of this Agreement, and (d) that such amounts shall be Purchaser's sole and exclusive remedy for any performance guarantee claim arising out of this Agreement. At the commencement of the first anniversary of the Commercial Operation Date and at the commencement of each Contract Year thereafter, the Production Guaranty Cap shall be increased by an amount equal to three percent (3%) of the Production Guaranty Cap in effect for the prior Contract Year.

## 8. Purchaser's Rights and Obligations.

- a. **License to the Premises; Facility Access Rights.** Subject to Section 8(a)(i) below, during the License Term, Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "License") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System and conducting inspections and studies related thereto; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System.
- i. **Construction License.** During the Construction License Term, Purchaser grants Seller and Seller's contractors and subcontractors a non-exclusive license to use an area of the Premises to be designated by

the Purchaser and reasonably acceptable to Seller exclusively as a laydown and construction staging area and for temporary storage (the "**Construction License**"). Notwithstanding Purchaser's grant of the License, all of Seller's construction-related activities must be confined to the area granted in the Construction License. Purchaser shall have no liability whatsoever in connection with property or equipment located in the area of the Construction License, excluding damage caused by the gross negligence or intentional misconduct of any Purchaser Party, and Seller shall indemnify Purchaser for any and all claims arising from the maintenance of such property or equipment; provided, Seller shall not be obligated to indemnify Purchaser for any loss, liability or claims arising out of the gross negligence or intentional misconduct of any Purchaser Party.

- ii. **License Terms.** The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). The term of the Construction License shall continue until the date that is the final completion date pursuant to the terms of the Construction Agreement (the "**Construction License Term**"). During the License Term and the Construction License Term, Purchaser shall ensure that Seller's rights under the License and the Construction License, as applicable, and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access.
  - iii. **Parking Interference.** Notwithstanding Seller's rights under the License and the Construction License, Seller shall not be permitted to occupy any portion of the Premises in a manner that would cause one or more parking spaces to be unavailable for use without the prior written consent of Purchaser, which shall not be unreasonably withheld.
  - iv. **Notice of Entry.** Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property.
  - v. **Memorandum.** Seller may, at its sole cost and expense, record such memorandum of License in the form of **Exhibit 5** or other form agreed by the Parties with the appropriate land registry or recorder's office.
- b. **OSHA Compliance.** Purchaser shall ensure that all OSHA requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.
  - c. **Maintenance of Facility; System.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair; except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Seller, its employees, agents, contractors or consultants (together with Seller, collectively, the "**Seller Parties**" and individually, a "**Seller Party**"). If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than the negligence or willful misconduct of any Seller Party, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition, subject to the provisions of **Section 15(b)**. The cost to repair or replace any portion of the Facility due to the negligence or willful misconduct or breach of this Agreement by any Seller Party shall be paid by Seller. Purchaser shall not be responsible for any work done by others on any part of the Facility unless Purchaser authorizes that work in advance. Purchaser will use commercially reasonable efforts to ensure that the Facility remains interconnected to the local utility grid at all times and will not intentionally permit cessation of electric service to the Facility from the local utility, except during operational testing of back-up systems, not to exceed an aggregate of three (3) days in any Contract Year. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs, except to the extent required as a result of damage caused by the negligence, intentional misconduct or breach of this Agreement by any Seller Party. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Nothing in this Section shall remove Seller's obligation to maintain all locations of physical attachment between Systems and their applicable Facilities, such as roof penetrations, parking lot posts, etc. Seller shall be responsible to pay for the cost of any replacement or repair to the Facility required due to any damage to the Facility caused by the negligence, willful misconduct or breach of this Agreement by any Seller Party.
  - d. **No Alteration of Facility.** If Purchaser wishes to make any alterations or repairs to the Facility that could adversely affect the operation and maintenance of the System, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give

Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System and interference with System operations. To the extent that temporary disconnection or removal of the System or interference with the operation of the System is necessary to perform such alterations or repairs, (i) any such disconnection, removal or other alteration of the System shall be completed by Seller's contractors or contractors approved in advance in writing by Seller, in accordance with a procedure and schedule approved in advance in writing by Seller and Purchaser at Purchaser's sole cost and expense, (ii) to the extent the outage results in Purchaser exceeding its permitted Scheduled Outages pursuant to Section 8(e) below, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages and shall invoice Purchaser for such amount in accordance with Section 4, and (iii) such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits. Purchaser shall be responsible to pay for the cost of any replacement or repair to the System required due to any damage to the System caused by the negligence, willful misconduct or breach of this Agreement any Purchaser Party. In performing its obligations under this Section 8(d), Seller shall use commercially reasonable efforts to incur costs reimbursable by Purchaser at standard market rates; provided, that Seller's reimbursable costs incurred in connection with the removal and replacement of the System shall not exceed an amount equal to Four Hundred and Twenty Dollars (\$420) per kW, as adjusted for inflation on the first day of each Contract Year by the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco area published by the Bureau of Labor Statistics. For purposes of clarification, Purchaser shall be responsible for all improvements, upgrades or repairs to the Facility, and Seller shall have no obligation to perform or pay for any improvements, upgrades or repairs to the Facility, except for any repairs resulting from the negligence, willful misconduct or breach of this Agreement by a Seller Party.

- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages caused or initiated by any Purchaser Party or necessitated due to damage to the Facility or the System for which Purchaser is responsible pursuant to this Agreement, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Section 4.
- f. **Liens.** 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 on or with respect to the System or any interest therein. Purchaser shall promptly notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and shall promptly cause the same to be discharged and released of record without expense to Seller or any Financing Party. Notwithstanding anything else herein to the contrary, pursuant to Section 19(a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, but no Financing Party lien may be placed on the Facility or the Premises of Purchaser.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System, with the exception of activities that are regularly conducted as part of the Facility's normal operations.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way intentionally cause and, where reasonably possible, shall not in any way permit any material interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could materially diminish the Insolation of the System, Purchaser shall promptly notify Seller and shall reasonably cooperate with Seller in attempting to preserve the System's existing Insolation levels. Encroachment upon Insolation due to acknowledged pre-existing conditions, or due to privately-owned development or growth outside Purchaser's control, are not subject to Purchaser's obligations pursuant to this Section 8(h). Upon Seller's written request, Purchaser will reasonably cooperate with Seller, at no expense to Purchaser, to secure a solar easement from a third party for the Premises to

prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System.

- i. **Data Line.** Purchaser shall provide Seller access to a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. Seller is responsible for providing all means of connection to the identified high speed internet data line, including boring, conduit, and wire, as applicable. If Purchaser fails to provide access to such high speed internet data line, Seller may install and operate a cellular modem communications device to acquire the necessary production data at Purchaser's expense.
- j. **Breakdown Notice.** Purchaser shall make reasonable attempts to notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to materially and adversely affect the System. Purchaser shall notify Seller as soon as possible upon the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law.**

"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 of this Agreement (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 which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Parties' obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement and neither Party shall have further liability to the other Party except with respect to payment of amounts accrued prior to termination. For the avoidance of doubt, if Seller terminates the Agreement pursuant to the terms of this Section 9, no Termination Payment shall be payable by Purchaser hereunder.

10. **Relocation of System.**

- a. **System Relocation.** If Purchaser ceases to conduct operations at the Facility, or resolves to make an alternate use of some or all of the parking areas where the Facility is located, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least ninety (90) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement (a "**Relocation Amendment**") that shall have all of the same terms as this Agreement except for the (i) License and Construction License, which will be amended to grant rights in the real property where the System relocated to; and (ii) Term, which will be equal to the remainder of the Term of this Agreement. Such Relocation Amendment shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties and in form and substance reasonably acceptable to Purchaser in connection with the substitute premises.
- b. **Costs of Relocation.** Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility, the repair and restoration of the Facility as pursuant to Section 11 below, all costs of engineering, design, permitting, procurement of new System components, installation and testing of the System at the substitute facility, all costs to comply with CEQA, all applicable permit and interconnection fees and expenses at the substitute facility, the costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System and any costs incurred by Seller to modify financing documents or obtain

any Financing Party's consent to such relocation; provided, that (i) Purchaser and Seller shall cooperate in good faith to determine such costs and expenses prior to commencing with the System relocation and (ii) such actual costs and expenses paid by Purchaser shall be reasonable, documented and submitted to Purchaser promptly after the completion of the relocation. In addition, Seller shall reasonably estimate and invoice Purchaser for the amount of electricity that would have been delivered to Purchaser during the relocation of the System and Purchaser shall pay such invoiced amounts to Seller pursuant to Section 4(d) above.

- c. **Adjustment for Insolation; Termination.** Seller shall remove the System from the vacated Facility at Purchaser's sole cost, within 45 days following the full execution of the Relocation Amendment by the Parties and Purchaser's written direction to Seller to remove the System from the Facility. Seller shall restore the Facility to the condition required pursuant to Section 11 below at Purchaser sole cost and expense. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to include an adjustment to Exhibit 1 in the Relocation Amendment, to be agreed to prior to commencing with the System relocation, such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, the Agreement will deemed to be terminated by Purchaser pursuant to Section 3(c)(ii) and Purchaser shall promptly pay the applicable Termination Payment specified on Exhibit 4.

## 11. **Removal of System at Expiration.**

- a. **Removal Obligations.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred eighty (180) days after the expiration of the Term. The Facility shall be returned to a condition at least as good as its original condition and in compliance with then-applicable building codes; provided, that Purchaser will be responsible for any cost of restoring the Facility to then-applicable building codes in excess of the estimated cost to restore the Facility to its original condition, ordinary wear and tear, alterations made by Purchaser and unrepaired damage caused by Purchaser or third parties excluded. Seller's obligations under this Section 11 shall include the removal of System mounting pads or other support structures installed by Seller. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications and Purchaser's then-existing roof warranties. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.
- b. **Decommissioning Fund.** No later than three hundred sixty five (365) days prior to the commencement of the sixth (6<sup>th</sup>) Contract Year, Seller shall provide Purchaser a written estimate of the cost to remove the System and restore the Facility as required pursuant to Section 11(a). The Parties shall meet and confer within thirty (30) days after such written estimate is received by Purchaser to resolve any concerns regarding such estimated cost. Seller shall provide one of the following forms of security for the cost to remove the System and restore the Facility to the required condition beginning on the first day of the sixth (6<sup>th</sup>) month of the sixth (6<sup>th</sup>) Contract Year: (i) a performance bond covering such cost, (ii) an investment or deposit account established with a financial institution reasonably satisfactory to Purchaser, or (iii) a guaranty or letter of credit issued by a financial institution reasonably satisfactory to Purchaser. If Seller elects to provide security in the form of an investment or deposit account pursuant to clause (ii) above, (a) Seller shall fund such account in 27 equal installments, with each installment to be paid once every sixth (6<sup>th</sup>) months, and (b) concurrently with the opening of such investment or deposit account, the Parties shall enter into an agreement setting forth the terms and conditions by which withdrawals of the funds on deposit in such account can be made, which terms and condition shall be consistent with the terms hereof. Such security shall secure the costs to remove the System and restore the Facility to the condition required pursuant to Section 11(a) and Seller shall not be permitted to use such security for any other purpose. For avoidance of doubt, any funds remaining after the removal of the System and restoration of the Facility are the sole property of Seller. Seller, in its sole discretion, shall determine which form of security to post, and may replace one form of security for another form of security in an equal amount from time to time. In the event of a Seller Bankruptcy Event or Seller fails to remove the System within one hundred eighty (180) days of the expiration of the term or earlier termination of this Agreement, Purchaser shall have the right to use the applicable security and funds for the sole purpose of

removal of the System and restoration of the Facility to the required condition and any remaining funds shall remain the property of the Seller or the Seller's Financing Parties, as applicable.

**12. Measurement.**

- a. **Meters.** The transfer of Energy from Seller to Purchaser shall be measured by a meter (a "Meter") at the Delivery Point, which shall be selected, provided, installed, owned, maintained, programmed, tested and operated, at Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Current/Proposed Utility Tariffs set forth on **Exhibit 2** and the interconnection agreement between Pacific Gas & Electric Company and Purchaser. A monitoring system with real time monitoring of the quantities and quality of Energy generated by the System shall also be installed for the System. Seller shall exercise reasonable care in the maintenance and operation of the Meters and the monitoring system and shall test and verify the accuracy of each Meter at least once every two (2) years. Seller shall inform Purchaser in advance of the time and date of these tests, and shall permit Purchaser to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of plus or minus two percent (2%) or better and monitoring results from Seller's Performance Monitoring and Reporting Service ("PMRS") that is viewable by Purchaser at all times through an online portal. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website. If testing of the metering equipment indicates that such equipment is in error by more than two percent (2%), then Seller shall promptly repair or replace such equipment. Seller shall make a corresponding adjustment to the records of the amount of electricity delivered by the Facility based on such test results for (i) the actual period of time when such error caused inaccurate Meter readings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the most recent test confirming accurate metering or the date the Meter was placed into service, but not to exceed twelve (12) months. After the Commercial Operation Date, Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters (including pursuant to the requirements of any interconnection agreement). Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement, in addition to accurate weather information.
- b. **Interactive Display for Generating Facilities.** At a single location of Purchaser's choice, Seller will install a single monitor for viewing by the general public consisting of a 36" flat panel screen with a computer and keyboard sufficient to view the data acquisition system ("DAS") monitoring of the System (the "Interactive Display"). The Interactive Display shall be housed in a cabinet, or on a wall, and the design, aesthetics, and cost of the Interactive Display shall be mutually agreed upon by Purchaser and Seller. Purchaser shall allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet or circuit. The total installed cost to Seller of such Interactive Display shall not exceed Two Thousand and 00/100 US Dollars (\$2,000). Following installation of the Interactive Display by Seller, Purchaser shall be responsible for all costs to repair, maintain and operate the hardware comprising the Interactive Display.

**13. Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "Defaulting Party" and each event of default shall be a "Default Event":
- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within thirty (30) days following receipt of written notice from the other Party (the "Non-Defaulting Party") of such failure to pay ("Payment Default");
  - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such



incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

- iv. Purchaser loses its rights to occupy and enjoy the Premises;
- v. a Party, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect; or
- vi. Following the Commercial Operation Date, Seller fails to deliver at least 50% of its Expected Contract Quantity for such Contract Year, for two (2) consecutive years.

b. **Remedies.**

- i. **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and may terminate this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.
- ii. **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and may terminate this Agreement or suspend performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to, for any given Contract Year, the amount set forth on **Exhibit 4, Attachment A** attached hereto, which annual amounts are calculated as (x) the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for (a) the loss or recapture of the investment tax credit equal to thirty percent (30%) of the System value, and (b) other financing and associated costs, (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in **Section 13(b)(iii)(C)** and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller, less (y) any amount equal to the proceeds received by Seller in the sale of the System equipment and components which Seller shall use commercially reasonable efforts to consummate. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.
  - B. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable, (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility, (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement

and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall comply with its obligations set forth in Section 11 at the sole cost and expense of the Defaulting Party. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

iv. Purchaser's Right to Operate. If a Seller Default Event occurs under Section 13(a), subject to the rights of the Financing Parties pursuant to Section 19 below, then Purchaser or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the System. Purchaser, its employees, contractors and designees shall have the unrestricted right to enter the System to the extent necessary to operate the System. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Purchaser as a result of the Purchaser's operation of, or election not to operate, the System. Purchaser shall pay Seller the applicable Contract Price for Energy provided hereunder, less any costs incurred by Purchaser to operate the System. Upon Purchaser's satisfaction that Seller has the ability to operate the System in accordance with this Agreement, Seller shall resume operational control.

#### 14. Representations and Warranties.

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

i. Due Organization, Etc. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law or organizational document of such Party; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

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

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

i. License. Purchaser has the full right, power and authority to grant the License contained in Section 8(a) and to enter into and perform all of Purchaser's obligations under this Agreement and any interconnection agreement entered into with the Utility. Such grant of the License and performance hereunder and under such interconnection agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility 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 Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.

ii. 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 or the Facility is bound.

iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects to the extent of knowledge of the individual supplying the information.

iv. 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.

v. **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.

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

- i. **Other Agreements.** Neither the execution and delivery of this Agreement by Seller nor the performance by Seller 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 Seller is a party or by which Seller or the System is bound.
- ii. **No Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a material adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement.
- iii. **Environmental Attributes.** Prior to conveyance to Purchaser, Seller holds and will hold until conveyed to Purchaser, the rights to all Environmental Attributes, which it has committed to convey to Purchaser hereunder.
- iv. **Intellectual Property.** All of the intellectual property used by Seller in the conduct of its business or otherwise in its possession is either validly licensed or owned solely by Seller and Seller has the exclusive right to use and possess such intellectual property for the life thereof.
- v. **Solvency.** From and after the Conditions Satisfaction Date, Seller shall have obtained financing commitments or otherwise have available to it financial resources sufficient to permit Seller to timely perform its obligations hereunder in accordance with the terms of this Agreement.

15. **System and Facility Casualty and Insurance.**

a. **System and Facility Casualty at End of Term.**

- i. **System.** Notwithstanding Seller's obligations in Section 7(d), if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement and pay Purchaser an amount equal to the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value of the System.
- ii. **Facility.** Notwithstanding Purchaser's obligations in Section 8(c), if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.
- iii. **Responsibility for Cost to Repair and Restore.** Nothing in this Section 15(a) shall alter the obligation of either Party to pay for the cost to repair and restore any damage caused by such Party as provided in this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth on Exhibit 9.
- ii. **Purchaser's Insurance.** Purchaser shall maintain property insurance in an amount equal to the full replacement cost of the Facility and commercial general liability insurance with coverage of at least Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate.

c. **Policy Provisions.** All insurance policies provided by Seller hereunder shall (i) contain a provision whereby the

insurer agrees to give the party not providing the insurance (a) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (b) not less than thirty (30) days written notice before the insurance is otherwise 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. Purchaser shall give Seller written notice of any cancellation, termination or non-renewal of insurance coverage within ten (10) days of obtaining knowledge thereof. Each Party shall ensure that the other Party is named as an additional insured on its commercial general liability policy. All Financing Parties shall be named as additional insureds on Purchaser's commercial general liability policies.

- d. **Certificates.** Annually and upon request by Purchaser, Seller shall deliver to Purchaser certificates of insurance evidencing the required coverage set forth on **Exhibit 9** and a copy of the policy endorsement that adds Purchaser as an additional insured to the applicable commercial general liability insurance policy. Annually, Purchaser shall deliver to Seller a certificate of coverage provided to Seller by the California Joint Powers Risk Management Authority ("CJPRMA"), a California public agency risk sharing pool of which Purchaser is a member, and a copy of a certificate from Purchaser naming Seller and its Financing Parties as additional insureds to Purchaser's self-insurance pool for commercial general liability losses. Upon request by Seller, Purchaser shall deliver to Seller a copy of the memorandum of coverage provided by CJPRMA and available on its website. A Party's receipt, review or acceptance of any such certificate or memorandum shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.
- f. **Waiver of Subrogation.** Seller and Purchaser hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property with respect to loss of, or damage to the extent that such loss or damage is insured by an Third Party Insurance Policy issued by a Third Party Insurance Carrier applicable to the System, Facility or other property of Seller or Purchaser. Each party shall obtain any special endorsements, if required by its Third Party Insurance Carrier, whereby the Third Party Insurance Carrier waives its rights of subrogation against the other party as required by this **Section 15(f)**. This provision is intended to waive fully, and for the benefit of the Parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any Third Party Insurance Carrier.

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

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times (excluding all Environmental Attributes), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under **Section 19**) is the tax owner of the System and all tax and accounting filings and reports will be filed in a manner consistent with this Agreement. It is the intent of Seller and Purchaser that the System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not be characterized, considered or deemed a fixture or affixed to or a part of the Facility or the Premises. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall, at Seller's cost, use commercially reasonable efforts to provide a disclaimer or release from such lienholder upon Seller's written request. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the County office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser, at Seller's cost, will use commercially reasonable efforts to obtain such consent from such owner. With respect to any financing or refinancing of the System entered into by Seller after the Conditions Satisfaction Date, upon request, Purchaser agrees, at Seller's cost, to use commercially reasonable efforts to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the seventh (7<sup>th</sup>) and fifteenth (15<sup>th</sup>) Contract Years and at the end of the Initial

Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System as mutually agreed by the Parties or, if the Parties are unable to agree, the Fair Market Value of the System as determined by an appraiser. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in this Section 16(b), the Parties shall make best efforts to mutually agree on the Fair Market Value of the System. If the Fair Market Value cannot be mutually agreed upon, then the Parties shall use good faith commercially reasonable efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value, as of the final day of the applicable Contract Year (“**Buyout Date**”). Within thirty (30) days of the selection of such appraiser, s/he shall evaluate and determine the Fair Market Value of the applicable System as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be shared equally between Purchaser and Seller.

- c. **Definition of Fair Market Value.** “**Fair Market Value**” means the greater of: (i) the amount that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed willing Purchaser, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition, and (ii) for any given Contract Year, the present value (using a discount rate of eight percent (8%)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity and Tax Credits and factoring in future costs and expenses associated with the System. If an appraiser is selected pursuant to Section 16(b), such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by any such appraiser shall be binding upon the Parties in the absence of fraud or manifest error.
- d. **Buyout Determination.** No later than sixty (60) days after determination of the Fair Market Value of the System, Purchaser shall confirm to Seller in writing of its intent to proceed or not to proceed with its option to purchase the System at the Fair Market Value. In the event Purchaser does not provide such written confirmation or elects not to proceed with such option, the provisions of the Agreement shall continue to apply as if Purchaser had not exercised the option to purchase the System.
- e. **Buyout Obligations.** If Purchaser confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the applicable System to pass to Purchaser on the Buyout Date, free and clear of any liens, and (B) assign all warranties for the applicable System to Purchaser. Purchaser shall pay the Fair Market Value to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Purchaser by Seller for payments under the Agreement. Upon such execution of documents and payment of the Fair Market Value, this Agreement shall terminate automatically and Purchaser shall own the System and all Environmental Attributes, Environmental Incentives and any available Tax Credits relating to the System. For the avoidance of doubt, payment of the Fair Market Value shall be in lieu of and instead of any payments described in Section 4(a) accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with Purchaser to give prompt effect to this transfer. All other personal property of Seller not included in Purchaser’s purchase shall be removed by Seller from Purchaser’s premises at no cost to Purchaser. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “**Indemnified Parties**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent

acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “Claim”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The 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 shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall not be liable under this Section 17(b) for any Claim for which such notice is not provided to extent such failure to delivery such notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** 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, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by any Seller Party. Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, below or near the Premises of any Hazardous Substance, to the extent deposited, spilled or otherwise caused by any Purchaser Party. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.
- i. **“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.
- d. **Limitations on Liability.**
- i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. **Actual Damages.** Seller’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments anticipated to be made by Purchaser during the Initial Term under this Agreement; provided with respect to any Claim made or Liability incurred prior to the issuance of notice to proceed, Seller’s aggregate liability shall not exceed the applicable Design Cancellation Payment. Purchaser’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the Termination Payment set forth in Exhibit 4, Attachment A for the year in which the Claim is made (such that if a Claim is made in one year and a second Claim is made in a second year, Seller will only be entitled to recover the difference (if any) between the amount recovered on the first Claim and the Termination Payment for the year in which the second Claim is made); provided that if the Claim is made or Liability incurred prior to the issuance of notice to proceed, Purchaser’s aggregate liability shall not exceed the

applicable Design Cancellation Payment. The provisions of this Section (17)(d)(ii) (A) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise, (B) shall not limit the recovery by any Party under any insurance policy, (C) prior to the issuance of notice to proceed, shall not apply to limit the liability of any Party for claims for property damage or personal injury, and (D) following the issuance of notice to proceed, shall not apply to limit the liability of any Party for third party claims for property damage or personal injury.

- iii. Non-Recoverable Costs. In every instance pursuant to the terms of this Agreement where Purchaser has the option or is required to pay Seller the Termination Payment set forth in Exhibit 4, Attachment A, in no event shall Purchaser be liable for costs, not included in the Termination Payment set forth in Exhibit 4, Attachment A, incurred by Seller or any of its subcontractors after the termination date specified by Purchaser. Such non recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable.

**18. Force Majeure.**

- a. Definition of Force Majeure. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); theft; vandalism; collision with third party automobile, aircraft or space object (such as a meteor); sabotage; collapse of the Facility for any reason; 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; hurricane; flood; lightning; acts of nature such as storms, floods, volcanic eruptions, forest fires, earthquakes; unavailability of electricity from the utility grid; failure of equipment not utilized by or under the control of the Party claiming Force Majeure; third-party challenge to the installation and operation of the System; and a budget non-appropriation event (as described in further detail in Section 18(c)). Notwithstanding the foregoing, "Force Majeure" shall specifically not include, without limitation, the failure or interruption of the production, delivery or acceptance of Electricity due to: economic hardship of either Party or insufficiency, unavailability, failure or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure event.
- b. Excuse Due to Force Majeure. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Non Appropriation Event. Notwithstanding anything herein to the contrary, due to the constitutional limitations on Purchaser, a Force Majeure event shall include a "budget non-appropriation event" in which Purchaser's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Purchaser. During the continuation of a budget non-appropriation event as defined above, if Purchaser does not otherwise have other funds available to make payments otherwise due on this Agreement, Purchaser shall not be obligated to pay for (and Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Purchaser agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Purchaser) may terminate this Agreement.
- d. Termination Event. Except as provided in Section 7(c)(v) above with respect to the extension of Milestones, if a Force Majeure event (other than a budget non-appropriate event, which is addressed in Section 18(c) above) continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right

to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid). For the avoidance of doubt, (i) if Purchaser terminates the Agreement pursuant to the terms of this Section 18(d), no Termination Payment shall be payable by Purchaser hereunder and (ii) Purchaser may not terminate this Agreement for a Force Majeure event that results in the extension of Milestones until such extensions exceed the amount permitted pursuant to Section 7(c)(v).

**19. Assignment and Financing.**

- a. **Assignment; Change of Control.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided that, Seller may, without the consent of Purchaser, assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party. Seller shall give Purchaser notice of any such collateral assignment within five (5) business days of making such assignment. Purchaser's consent to any assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any assignment, the assignor shall remain a primary obligor unless assignee shall expressly assume in writing all obligations under this Agreement. Any assignment of Seller's rights and/or obligations under this Agreement shall not result in any change to Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Except as provided below, any direct or indirect change of control of Seller shall be deemed an "assignment" hereunder, requiring the prior written consent of Purchaser, provided that any change of control that results (i) from a direct or indirect transfer of any membership interests in Seller or any entity of which Seller is a subsidiary to a Financing Party making a tax equity investment in the System or (ii) to an existing member of Seller or any entity which is a member of Seller, shall not constitute an "assignment" for the purposes of this Section 19 and shall not require the prior written consent of Purchaser. Seller shall give Purchaser notice of any such transfer to a Financing Party making a tax equity investment within five (5) business days of such transfer.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. The term "person" means any natural person, unincorporated association, corporation, partnership, joint venture, limited liability company, trust, other legal entity or any Governmental Authority. Both Parties agree, at Seller's expense, in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19(a), Purchaser agrees, at Seller's expense, to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to Purchaser and such Financing Parties. Purchaser will agree, at Seller's expense, to make payments under this Agreement as directed by Financing Parties, to provide copies of notices under the Agreement to Financing Parties, and not to amend or terminate this Agreement without notice to Financing Parties.
- c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "Successor Provider"). Purchaser agrees to accept performance from any Successor Provider so appointed, provided, that (i) such Successor Provider performs in accordance with the terms of this Agreement, and (ii) such Successor Provider (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement.
- d. **Financing Party Rights.**
- i. **Notice.** Purchaser shall deliver to each Financing Party, concurrently with delivery thereof to Seller, a copy of every notice of default, notice of termination or intent to terminate this Agreement, and any notice



delivered pursuant to Sections 13, 16 and/or 18 above. Any Financing Party shall have the right, but not the obligation, to perform any obligation of Seller under this Agreement and to cure any breach and/or Seller Default Event. Purchaser shall accept performance by or at the instigation of a Financing Party in fulfillment of Seller's obligations, for the account of Seller and with the same force and effect as if performed by Seller. No performance by or on behalf of a Financing Party shall cause it to be deemed to be in possession of the System or bound by or liable under this Agreement.

- ii. No Termination; Financing Party Cure Period. Notwithstanding anything to the contrary contained herein, Purchaser agrees that it shall not terminate this Agreement for a Seller Default Event unless it has given all Financing Parties written notice in accordance with Section 19(d)(i) above and such Financing Parties fail to cure such Seller Default Event within a cure period calculated as follows: (a) for a Payment Default, the cure period set forth in Section 13(a)(i) above plus an additional thirty (30) days, and (b) for a Default Event other than a Payment Default, the cure period set forth in Section 13(a)(ii) above plus an additional sixty (60) days.
- iii. Cure Requiring Possession. If a Seller Default Event under this Agreement is of such a nature that it cannot be practicably cured without first taking possession of the System or is of a nature that is not susceptible of being cured by the Financing Parties, then Purchaser shall not be entitled to terminate this Agreement by reason of such Seller Default Event if and so long as (a) the Financing Parties proceed diligently to attempt to obtain possession of the System pursuant to the rights of the Financing Parties under the financing documents and (b) upon obtaining such possession, the Financing Parties shall proceed diligently to cure such Seller Default Event if the same is susceptible of being cured by the Financing Parties. The Parties acknowledge and agree that a Payment Default (x) is susceptible of being cured by the Financing Parties and (y) can be cured by the Financing Parties without first obtaining possession of the System.
- iv. Effect of Cure. The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the System if and when such default or Default Event is cured. If the Financing Parties, or a purchaser through foreclosure under the financing documents or otherwise, shall (a) acquire title to the System and the rights under this Agreement, (b) cure all Payment Defaults and other defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be, and (c) assume all the obligations of Seller hereunder to the extent first accruing and arising from and after the date of such assumption, then (i) any default or Default Event of Seller which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Agreement, and (ii) Purchaser shall recognize the Financing Parties or such purchaser, as the case may be, as if such party had been the Seller under this Agreement.
- v. Exercise of Remedies. So long as the period for a Financing Party to exercise such Financing Party's cure rights for any Seller Default Event has not expired, Purchaser shall not (a) give any notice terminating or electing to terminate this Agreement, or (b) otherwise exercise any other rights or remedies under this Agreement by reason of such Seller Default Event.
- vi. No Amendment. Notwithstanding anything to the contrary in this Agreement, if Seller at any time or from time to time has given Purchaser written notice of a Financing Party, then no cancellation, termination (including Seller's termination of this Agreement pursuant to any express right of termination in this Agreement or under applicable law), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Agreement, or subordination of this Agreement to any encumbrance on the fee estate, shall be effective or binding if done without such Financing Party's prior written consent.

Seller's Financing Parties are hereby made express third party beneficiaries of the provisions of this Section 19.

- 20. California Public Records Act. Purchaser is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller proprietary information is contained in documents or information submitted to Purchaser, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, Purchaser will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Marin County before Purchaser's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Purchaser's deadline for

responding to the CPRA request, Purchaser may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Purchaser harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys' fees) that may result from denial by Purchaser of a CPRA request for information arising from any representation, or any action (or inaction), by Seller.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, agency name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Miscellaneous Provisions**

a. **Choice of Law.** The law of California, the state where the System is located, shall govern this Agreement without giving effect to conflict of laws principles.

b. **Dispute Resolution and Attorneys' Fees.** Seller and Purchaser shall negotiate in good faith in the event of any dispute arising during the performance of this Agreement. If the dispute cannot be resolved by the designated representatives of each of Seller and Purchaser after two (2) business days of negotiations, at either Party's option the dispute may be promptly escalated to negotiations among representatives of the Parties with authority to resolve the dispute ("**Decision-Makers**"). If the designated Decision-Makers are unable to resolve the dispute within five (5) business days of negotiations, either Party may require that non-binding mediation take place. In such mediation, the Decision-Makers shall meet for at least (3) hours with a mediator whom they choose together and their respective counsel. Any dispute that remains unresolved after such non-binding mediation shall be resolved in the state and federal courts located in Marin County, California. Each Party hereby submits to the personal jurisdiction of such courts and consents to service of process in connection with any action, suit or proceeding against such Party. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

d. **Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement. Seller shall cooperate with Purchaser's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option and sole cost of Purchaser. Seller shall have the option to make itself available onsite to review the progress of the project and Agreement, as requested by Purchaser, upon reasonable advanced notice. Seller agrees to extend to Purchaser or his/her designees and/or designated auditor of Purchaser, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Purchaser, state, and federal regulations are met, and that adequate internal fiscal controls are maintained. Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Purchaser audits. Seller shall pay to Purchaser the full amount of any audit determined to be due as a result of Purchaser audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

e. **Severability.** Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and

purpose of the affected provision.

- f. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 11 (Removal of System at Expiration), Section 13(b) (Remedies), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (California Public Records Act), Section 22(a) (Choice of Law), Section 22(b) (Dispute Resolution and Attorneys' Fees), Section 22(c) (Notices), Section 22(j) (Comparative Negligence), Section 22(k) (Non-Dedication of Facilities), Section 22(m) (Service Contract), Section 22(n) (No Partnership), Section 22(p) (Full Agreement, Modification, Invalidity, Counterparts, Captions), Section 22(q) (Forward Contract), Section 22(r) (No Third Party Beneficiaries), Section 22(u) (Debt Liability Disclaimer), and Section 22(w) (Conflict of Interest).
- g. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or 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.
- h. **Time is of the Essence.** Time is of the essence in performance by the Parties.
- i. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- j. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- k. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall 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 shall 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 all 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 shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- l. **Estoppel.** Either Party hereto, without charge but, in the event that Seller is the requesting Party, at Seller's expense, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written

instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- m. **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. Purchaser will not take the position in any public accounting or in any other filings suggesting that it is anything other than a purchase of electricity and receipt of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) from the System.
- n. **No Partnership.** No provision of this Agreement shall 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 shall be considered the agent of the other.
- o. **Non-Exclusive Contract.** This Agreement does not establish an exclusive contract between Purchaser and Seller for the purchase of electricity or power or any services. 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 beyond the System contemplated herein; the right to request proposals from others with or without requesting proposals from Seller; and the unrestricted right to bid any such product, support or service.
- p. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any exhibits, attachments or schedules, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. 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 unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- q. **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.
- r. **No Third Party Beneficiaries.** Except as set forth in Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- s. **Non-Discrimination.** Seller shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.
- t. **City Business License.** Seller shall obtain and maintain and shall cause its contractors and subcontractors to obtain and maintain during the duration of this Agreement, a City business license as required by the Municipal Code. Seller shall pay and shall cause its contractors and subcontractors to pay any and all state and federal taxes and any other applicable taxes. Purchaser shall not be required to pay for any Energy provided under this Agreement, until Seller has provided Purchaser with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).
- u. **Debt Liability Disclaimer.** Purchaser, including, but not limited to, any source of funding for Purchaser, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of Seller or its heirs, successors or assigns. Purchaser shall not be liable for and shall be held harmless and indemnified by Seller for any claims for damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of Seller. Purchaser and its agencies and divisions, including, has no obligation to defend or undertake the defense on behalf of Seller or its heirs, successors or assigns.
- v. **Prevailing Wage.** Seller agrees it shall pay prevailing wages in connection with the construction and operation of the System.

- w. **Conflict of Interest.** Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

**Exhibit 4**  
**Attachment A**

Termination Payment Amount

<b>Contract Year</b>	<b>Community Center</b>
1	421,738
2	380,702
3	339,245
4	297,354
5	255,020
6	215,656
7	213,096
8	205,172
9	196,547
10	187,197
11	177,237
12	166,132
13	153,592
14	140,138
15	120,894
16	101,564
17	88,409
18	76,687
19	66,268
20	57,039
After Year 20	Fair Market Value

**Exhibit 4**  
**Attachment B**

**Subcontractors**

**M Bar C Construction, Inc.**  
674 Rancheros Drive  
San Marcos, CA 92069  
Phone: 760.744.4131  
Fax: 760.744.4449  
[www.mbarconline.com/index.html](http://www.mbarconline.com/index.html)

**Skyline Steel**  
2020 Hurley Way, Suite 150  
Sacramento, CA 95825  
Phone: 916.463.0105  
Fax: 916.923.0446  
[www.skylinesteel.com/globalnav/home](http://www.skylinesteel.com/globalnav/home)

**Danlin Corporation**  
40 Mark Dr.  
San Rafael, CA 94903  
Phone: 415.491.4813

**RBI Solar**  
810 N. Twin Oaks Valley Rd  
Suite 135  
San Marcos, CA 92069  
Phone: 513-242-2051  
Fax: 513-242-0816  
[info@rbisolar.com](mailto:info@rbisolar.com)

**End of Exhibit 4**

**Exhibit 5**

**Form of Memorandum of License**

**NOTICE OF GRANT OF CONTRACTUAL INTEREST**

In accordance with the provisions of [REDACTED], notice is hereby given of that Solar Power Purchase Agreement dated as of [REDACTED] for purchase and sale of electrical energy (the "**Solar Agreement**"), such Solar Agreement includes the grant of License to Seller of energy, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Agreement:

**Seller:** SolEd Solar Holdings I, LLC  
c/o SolEd Benefit Corp, Managing Member  
P.O. Box 151731  
San Rafael, CA 94915-1731  
Attention: David Kunhardt, CEO

**Purchaser:** Marinwood Community Services District  
775 Miller Creek Road  
San Rafael, CA 94903-1323

Date of Execution of Solar Agreement: [REDACTED]

Description of Premises: See **Exhibit 5, Attachment A**

**TERM OF AGREEMENT:**

The term of the Agreement shall be until the last day of the calendar month in which the twentieth (20th) anniversary of the Commercial Operation Date (as that term is defined in the Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Agreement.

[signature pages follow]



**Exhibit 5**  
**Attachment A**

**Description of the Premises**

**Site Name/Description:** Marinwood Community Center

**Site Address:** 775 Miller Creek Road, San Rafael

**APN:**

**Coordinates:**

**Aerial view:** See below



Exhibit 6-1

**Design and Engineering Requirements**

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**1. Site Access**

Seller and its EPC contractors, (together referred to as “Seller” in this Exhibit 6-1) shall conform to all Purchaser rules and requirements for accessing sites. Road usage, road closures, number of vehicles, access points, etc., may be regulated by the Purchaser. Site visits shall be approved and proper check-in requirements must be followed. Seller shall provide signage and/or electronic notification of possible operational impacts upon request by Purchaser. Unless otherwise determined by Purchaser, Seller shall be responsible for providing bathroom and storage facilities for all workers on-site, and shall be responsible for procuring, installing, securing, and removing all equipment, materials, temporary security fencing and scaffolding.

**2. Project Management**

**Project Manager**

Seller’s EPC Contractor shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the Purchaser.

**Project Schedule**

A Project Schedule is to be prepared and submitted to the Purchaser within 14 days of Agreement execution. The Purchaser will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the Purchaser may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities including design, equipment procurement, construction and commissioning.

**Submittals**

Seller shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

**Agreement Submittals**

Submittal	Submittal Date	Date
<b>I. System Design</b>		<b>See Exhibit 8</b>
a. System Design Documentation	At each design milestone	
b. Warranties	At Construction Documents milestone	
c. Testing Plan	At Construction Documents milestone	
d. Power production modeling	At Construction Documents milestone	
<b>II. Procurements and Construction</b>		
a. Safety Plan	30 days before commencement of construction	
b. As-built Documentation	After completion of Proving Period	
<b>III. Testing</b>		
a. Acceptance Test Results	After Acceptance Test	
b. Startup Test Results	After Startup Test	
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	
d. Proving Period Report	30 days after System Startup	
<b>IV. Training</b>		
a. Training Materials	30 days before Training Session	

b. Monitoring Manual	30 days before Training Session	
c. Operations & Maintenance Manual	30 days before Training Session	

### Solar Incentives

Seller shall submit applications for all available energy production incentives (e.g., CSI, SGIP, SREC, etc.) or, should the Purchaser already have submitted such applications, assume responsibility for all future requirements (agreements, submittals, etc.) related to these programs. This includes actions necessary to ensure compliance with the Utility net metering program and all interconnection agreements and related documents for Purchaser participation and utilization of the benefits of each applicable program. Seller shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the Purchaser in satisfying the requirements of the incentive program. Seller shall be responsible for providing updated documentation to incentive program administrators throughout the project, as required by rules of the relevant incentive programs. Incentives shall be paid to the Purchaser if the system is to be purchased or included in this Agreement.

### Interconnection

Seller shall be responsible for preparing, submitting, and procuring interconnection application to appropriate utility and department. Seller shall accept responsibility for payment for utility interconnection studies and/or project management that are not anticipated but may be required. All anticipated utility work (e.g. transformer installation, meter addition) shall be the responsibility of the Seller. At project completion, Seller shall confirm Permission To Operate with the utility, and shall verify most financially-beneficial rate schedule and billing.

Seller must comply with all interconnection requirements. Systems installed as part of this project will take advantage of Net Energy Metering (NEM), unless specified otherwise by Purchaser or its agents. Seller shall be responsible for ensuring the system design and interconnection qualifies for NEM, as applicable.

## 3. System Design

### Design Review Process/ Phases

The Purchaser will review and approve design documentation based on the requirements as detailed in Section 3.3 of this document. Additional documents may be requested by the Purchaser as needed. The precise organization and format of the design submittals shall be agreed upon by Seller and the Purchaser prior to the first design submission. The Purchaser will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Seller shall provide additional detail, as required, at each successive stage of the Design Review. Seller shall not order equipment and materials until Schematic Design submittals have been approved. Seller shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The Purchaser will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Seller shall not enter a subsequent design phase without the approval of the Purchaser.

Seller is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. Costs for engineering reviews and approvals shall be borne by the Seller. System designs must take into account Purchaser aesthetic issues and not conflict with any current Purchaser operations.

### Sellers' License Classification

In accordance with the provisions of California Public Contract Code §3300, the Purchaser requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Contractor License (B), Electrical Contractor License (C-10), or Solar Contractor License (C-46). It shall be acceptable for a Respondent that does not possess a C-10 or C-46 License to list a Subcontractor with a C-10 or C-46 License.

## Design Submittals

### 3.2.1 Plan Set

Seller shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the Purchaser. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

- Site Layout Drawings, with distances from roof edges and existing equipment, as applicable
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Electrical Single-Line and Three-Line Diagrams
- Module Stringing Diagrams
- Electric Wire and Conduit Schedule
- Electrical Warning Labels & Placards Plans
- Lighting Plan (for elevated shade structure, as required)
- Network Connection Diagrams
- Architectural Drawings
- Structural/Mechanical Drawings
- Geotechnical Drawings
- Manufacturer's Cut Sheets with Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Seller shall include adequate time for Purchaser review and approval of submittals, as well as re-submittals and re-reviews. Minimum Purchaser review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

### 3.2.2 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the location closest to the site. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The Purchaser will independently verify production models are accurate to the designed systems and utilize simulation results for economic evaluations. Seller shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

Seller shall avoid excessive shading on modules to the extent possible. Where shading losses are encountered, Seller shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.

## Permits and approvals

Construction Documents must be reviewed and approved by all authorities having jurisdiction (AHJs) over the work, which may include, but are not limited to: the Purchaser, the City or County in which the work is being done, the utility, the Office of Statewide Health Planning and Development (OSHPD), and the California Solar Initiative Program Administrator. Seller shall be responsible for obtaining all approvals and shall account for permitting and inspection requirements in their system designs, project pricing, and schedule. Seller shall attend all site verification visits conducted by the applicable public utility or Governmental Authority, including any special inspections for trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements. The Purchaser will not grant Seller relief based on Seller's incomplete or incorrect understanding of permitting and approval requirements.

## Technical Requirements

### 3.4.1 General Considerations

All documentation and components furnished by Seller shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the Purchaser and all applicable industry codes and standards. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Utility Interconnection Requirements, California Building Standards Commission Codes, and all other federal, state, and local jurisdictions having authority.

### 3.4.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- National Electrical Code (NEC)
- California Public Utility Commission (CPUC) and Utility Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- International Code Council (ICC) Codes
- California Building Standards Commission (BSC) Codes

### 3.4.3 Modules

In addition to the above, the PV modules proposed by Seller shall comply with at least, but not limited to, the following:

- IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”.
- System modules shall be UL1703 listed and CEC listed.
- Modules shall be new, undamaged, fully warranted without defect.
- If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

#### 3.4.4 Inverters

In addition to the above, inverters proposed by Seller must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all Utility interconnection requirements.
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems”.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall be CEC-listed with an efficiency of 95.5% or higher.
- Inverters must automatically reset and resume normal operation after a power limiting operation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with Purchaser activities.

#### 3.4.5 Electrical Balance of System Components

- Each proposed PV system shall include, at a minimum, one fused DC disconnect and one fused AC disconnect for safety and maintenance concerns.
- String combiner boxes shall be load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- Seller shall utilize surge suppressors to protect the appropriate equipment from electrical surges.
- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

#### 3.4.6 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion, UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. Seller shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not



compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- For unframed modules, bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- Seller shall utilize tamper-resistant PV module to rack fasteners for all PV module mounting.
- Final coating and paint colors shall be reviewed and approved by the Purchaser during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

#### 3.4.7 Corrosion Control

In addition to the above, Corrosion Control proposed by Seller must comply with at least, but not limited to the following requirements:

- Fasteners and hardware throughout system shall be stainless steel, aluminium or hot-dipped galvanized steel.
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components
- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.

#### 3.4.8 Roofing Requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. A minimum of four feet of clearance shall be provided between PV equipment and the edge of the roof. Clearance guidelines of the local fire marshal shall be followed. The installation of solar or thermal systems will be reviewed for code compliance and adherence to the *State Fire Marshal Solar Photovoltaic Installation Guideline*. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment.

Proposed roof top mounted systems may be ballasted, standing seam attachment, or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Seller prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Seller shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted. As part of the design submittals, Seller shall include signed certificates from the roofing manufacturer stating:
  - The roofing contractor is certified installer of Complete Roofing System.
  - The manufacturer's Technical Representative is qualified and authorized to approve project.
  - Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
  - Existing warranty incorporates the new roofing work and flashing work.
- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
- All materials and/or sealants must be chemically compatible.
- All penetrations shall be waterproofed.
- Detail(s) for the sealing of any roof penetrations shall be approved in writing to the Purchaser, as well as the manufacturer of the existing roofing system, as part of system design review and approval – prior to Seller proceeding with work. The Purchaser will make available the roofing manufacturer for each building for consultation with Seller as part of the design process.
- Any damage to roofing material during installation of solar systems must be remedied by Seller.

#### 3.4.9 Shade Structure Requirements

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the Purchaser's approval.

All shade structure PV systems shall include LED lighting. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective. Lighting systems shall also meet the following requirements:

- Lighting shall be LED lighting or other similar energy efficient lighting system.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new SSS canopy lighting.

- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.

Photocell controls shall be installed and energize new lighting fixtures when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be code compliant and will be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the Purchaser.

#### 3.4.10 Ancillary Equipment Enclosures

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing: all pad-mounted equipment shall be surrounded by a fence to prevent access by unauthorized personnel. The fence shall be a six (6) foot high chain link fence with provision for vinyl privacy slats or mesh screen mutually agreed upon. This requirement does not apply to existing perimeter fences already in place, and may be waived at the Purchaser's sole discretion.
- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal Purchaser operations and minimizes the visual impacts to the site.

#### 3.4.11 Placards and Signage

- Placards and signs shall correspond with requirements in the National Electric Code and the interconnecting utility in terms of appearance, wording, and placement.
- Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

#### 3.4.12 Infrastructure for Ground Mount Systems (N/A)

Seller will be responsible for incorporating the following elements in the design and construction of the System:

Fencing: the site shall be surrounded by a fence to prevent unauthorized personnel from gaining access the site. The fence shall be a eight (8) foot high chain link fence with vinyl privacy slats.

Gates shall be installed to enable site access for trucks.

A pathway a minimum of ten (10) feet wide passable by a maintenance truck shall be provided within the array fence to allow for access to all equipment enclosed within the fence area.

Access to water for maintenance (module cleaning) purposes, as determined adequate by Seller and approved by the Purchaser.

Access to low voltage (120V) AC power to power maintenance equipment and miscellaneous equipment.

Seller shall install and ensure activation of sufficient security cameras on site to monitor array area, connected to the site's security system, in collaboration with the Purchaser.

Seller will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management.

Seller will be responsible for creating an access road to any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.

#### 3.4.13 Wiring and Cabling Runs

- Seller shall install all AC conductors in conduit.

- Direct burial wire will not be acceptable. Conduit buried underground shall be suitable for the application and compliant with all applicable codes. A tracing/caution tape must be installed in the trench over all buried conduit.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC 2011 Article 300.5. The Seller is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.
- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the Purchaser as part of Design Review.
- At request of Purchaser, Seller shall install a space conduit at under-ground locations. All spare conduits shall be cleaned, mandrelled, and provided with a pullwire.
- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Design Builder shall install and secure the exposed string cable homeruns along the beams or structure where the combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 1.5% and acceptable wire loss in AC circuits is < 1.5% as well.
- All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- All electrical connections and terminations shall be torqued according to manufacturer specifications and marked/sealed at appropriate torque point.

#### 3.4.14 Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.
- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

#### 3.4.15 Monitoring System, DAS, and Reporting

Seller shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the Purchaser to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Seller shall provide equipment to connect the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The Purchaser will pay for the cost of cellular data service if needed, but not for the modem or other equipment needed to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed for each site

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the Purchaser for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable Purchaser staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document. At a minimum, Purchaser shall have the ability to compare irradiance to simultaneous power production measurements through linear regression analysis.

Additionally, Seller shall make available, at no additional cost, the following reports after Final Completion of the project:

- Monthly Production report shall be available online to the Purchaser personnel.
- System performance data shall be made available electronically to the Purchaser in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the Purchaser to assist the Purchaser in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the Purchaser in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

#### Warranties

Seller shall provide a comprehensive ten (10) year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (25) years of operation.
- Inverters: Inverters shall carry a minimum 10-year warranty (direct purchase price must include a 20-year warranty).
- Meters: At minimum, meters shall have a five (5) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- Mounting system: twenty (20) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: the remainder of system components shall carry manufacturer warranties conforming to industry standards.

All warranties must be documented, in advance and be fully transferable to Client.

All work performed by Seller must not render void, violate, or otherwise jeopardize any preexisting Purchaser facility or building warranties or the warranties of system components.

#### 4. PROCUREMENT/CONSTRUCTION

##### Tree Removal

Any trees that are in the footprint of systems to be installed by the Seller shall be removed by the Seller at their expense, subject to the approval of the Purchaser. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The Purchaser will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Seller identifies these trees during the design process. The Seller shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Seller's responsibility.

##### Line Location

Seller will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure. In addition to USA Dig and utility line-locating, a private line-locator must be used for any project requiring underground work.

##### Quality Control

To ensure safety and quality of the installation, Seller shall:

- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Fully comply with all applicable notification, safety and Work rules (including Purchaser safety standards) when working on or near Purchaser facilities.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

##### Removal and Remediation

Seller shall remove all construction spoils, abandoned footings, utilities, construction equipment and other byproducts of construction. All disturbed areas including landscaping, asphalt, and concrete shall be remediated to be in equal or better condition than found. Parking lots shall be re-stripped if affected by construction operations.

The site shall be left clean and free of debris or dirt that has accumulated as a result of construction operations.

## 5. TESTING AND COMMISSIONING

Following completion of construction, Seller shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be submitted and approved by the Purchaser prior to substantial completion of construction. A detailed description of each phase is provided below.

### Acceptance Testing

Seller shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed list of all items to be inspected and tests to be conducted.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level voltage (open circuit) and amperage (under load) testing for all PV strings. Amperage testing shall be performed concurrently with irradiance testing.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified. Performance testing shall be performed concurrently with irradiance testing.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Seller conducts all Acceptance Testing based on the Testing Plan approved by the Purchaser prior to substantial completion, Seller shall submit a detailed Acceptance Test Report to the Purchaser for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

#### Proving Period (30 days)

Upon completion of Acceptance Testing and System Startup, and approval by the Purchaser, Seller shall monitor the system during a thirty (30) day Proving Period and submit a report for Purchaser review and approval prior to final acceptance by the Purchaser. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Seller shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the Purchaser for access throughout the Proving Period. Seller shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

All data and reports required in Section 3.5.15 shall be fully functional and available to the Purchaser at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period and deficiencies in these areas (including missing data, inaccurate reports, and other issues that make validation of system performance inconclusive) shall be grounds for denying approval of the Proving Period Report.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Seller, deficiencies shall be identified with proposed corrective actions submitted to the Purchaser, and the Proving Period test repeated. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase and submitted to the Purchaser for review and approval. The report shall contain, but not be limited to, the following information; calculations shall be provided in Excel format with formulas visible to allow for peer review:

- System description
- Test period
- Test results
- Anomalies identified during test
- Corrective action performed
- Actual measured performance



- Calculations detailing expected performance under TMY conditions

#### Close-out Documentation Requirements

Close-Out documents prepared by Seller must include at minimum, but not limited to, the following items:

- Final As-Built Drawing Set with accurate string diagram, provided in (2) hard copy sets and an electronic copy in both DWG and PDF format (or as desired by Purchaser).
- Megger test Results
- Module flash-test results with serial numbers
- Component warranties
- Signed inspections cards from AHJ and required Special Inspections
- Interconnection agreements and Permission To Operate
- Owner's Manual

#### Training

The Seller shall provide four (4) hours of on-site training for Purchaser personnel in all aspects of operation, routine maintenance, and safety of the PV systems, DAS, and monitoring solution. At a minimum, training topics shall include the following:

- PV system safety, including shut-down procedures
- PV module maintenance and troubleshooting
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- DAS and monitoring solution, including standard and custom reporting

Seller shall submit a proposed Training Plan during the design process for approval and provide all training materials and manuals to support on-site training in advance of scheduled training sessions (see schedule of submittals in Section 2.3, "Submittals"). The on-site portion of the training program shall be scheduled to take place at the jobsite at a time agreeable to both the Purchaser and Seller.

## 6. OPERATIONS AND MAINTENANCE

Seller's EPC Contractor shall offer Operations and Maintenance services for ten (10) years with their Proposal, with an option to extend the Contract for up to an additional ten (10) years. The Operations and Maintenance agreement will be between EPC Contractor or affiliate and the System Owner and Seller of energy. The Purchaser shall not execute the Operations and Maintenance services agreement. In offering such services, the O&M Contractor shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior). Maintenance by Seller and its contractors shall ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of panel wash-downs shall be determined by Seller based on system monitoring data. Environmental sensors such as pyranometers shall be tested and recalibrated at least once every three (3) years.

For any maintenance visits, Seller shall give 3-day advance notification to Purchaser, and no on-site visits shall be performed without approval of the Purchaser, except in case of emergency.

Seller's contractors shall perform the following maintenance services, at a minimum, as described in the following sections:

## Preventive Maintenance

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/amperage) at inverter and string levels
- System visual inspection to include but not be limited to the list below. All discovered issues shall be resolved as needed.
  - Inspect for stolen, broken or damaged PV modules, record damage and location. Report to the Purchaser and wait for the Purchaser to authorize a course of action.
  - Inspect PV wiring for loose connections and wire condition.
  - Inspect for wires in contact with the structure or hanging loose from racking.
  - Check mechanical attachment of the PV modules to the racking.
  - Check attachment of racking components to each other and the structure.
  - Verify proper system grounding is in place from panels to the inverter.
  - Check conduits and raceways for proper anchorage to structures.
  - Inspect all metallic parts for corrosion.
  - Check combiner boxes for proper fuse sizes and continuity.
  - Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration).
  - Inspect disconnects for proper operation.
  - Survey entire jobsite for debris or obstructions.
  - Inspect fasteners for proper torque and corrosion.
  - Inspect inverter pad for cracking or settling.
  - Inspect electrical hardware for proper warning and rating labeling.
  - Inspect alignment of arrays and racking to identify settling foundations or loose attachments.
  - Inspect operation of tracking hinges, pivots, motors and actuators if present.
  - Check for proper operation and reporting of monitoring hardware.
  - Inspect sealed electrical components for condensation buildup.
  - Inspect wiring and hardware for signs of damage from vandalism or animal damage.
- Routine system maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work.
- Module cleaning, at a frequency to be determined by the ongoing monitoring of the system such that effect on production is no more than 5%.
- Routine DAS maintenance to include sensor calibration and data integrity check.

## Troubleshooting, Inspection and Additional Repairs

- Dispatch of field service resources within two business days of notification (via automated or manual means) for repairs as necessary to maintain system performance.
- Any corrective action required to restore the system to fully operational status shall begin within 24 hours of the service resources arriving on-site.
- Major system repairs, not to include mid-voltage switchgear or transformers.

## Customer Service Support

- Support telephone line made available to Purchaser staff to answer questions or report issues.
- Support line shall be staffed during operational hours from 8 am – 6 pm California Standard Time. During times outside of this operational period, an urgent call shall be able to be routed to a supervisor for immediate action.

## Major Component Maintenance and Repair

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer's warranty specifications. Those include but are not limited to the following annually:
  - Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
  - Inspect, clean/replace air filter elements
  - Check for corrosion on all terminals, cables and enclosure.
  - Check all fuses.
  - Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
  - Check condition of all the AC and DC surge suppressors.
  - Torque terminals and all fasteners in electrical power connections.
  - Check the operation of all safety devices (E-stop, door switches).
  - Record all operating voltages and current readings via the front display panel.
  - Record all inspections completed.
  - Inform inverter manufacturer of all deficiencies identified.
  - Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.
- Customer advocacy with vendors.

## Other System Services

- O&M Manuals – Seller shall provide three (3) copies of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the Purchaser as they become available.
- Management of long term service and warranty agreements, ongoing.
- Seller shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the Purchaser upon request.

O&M services shall be priced separately from the design and construction of the PV system. Seller shall submit a detailed description of their O&M services, detailing the activities and the intervals at which they will be performed, with their Proposal.

**End of Exhibit 6-1**

Exhibit 6-2

**Equipment Warranties**

**CONTRACTOR WARRANTY**

Contractor warrants and guarantees to Purchaser that all of Contractor's work under this agreement will be (a) performed in a professional and workmanlike manner; (b) performed in accordance with generally accepted home improvement practices; (c) performed in accordance with the requirements of this agreement and any required governmental inspections, tests, or approvals; and (d) free from material faults and defects in workmanship ("Defects") for a period of ten (10) years after the date of completion of the Project. Contractor warrants that all materials and equipment will be new unless otherwise specified, and of good quality. All materials and equipment will be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions and specifications of the applicable supplier or manufacturer. This warranty includes diagnosis, repair and/or replacement of the System or System component, exclusive of the manufacturer's coverage. This warranty extends to the original Purchaser and to any subsequent purchasers or owners of the property during the warranty period. All work performed under warranty will be done at no cost to the Purchaser.

This warranty does not apply to:

1. Damage, malfunction, or degradation of electrical output caused by failure to properly operate or maintain the system in accordance with the printed instructions provided with the system.
2. Damage, malfunction, or degradation of electrical output caused by any repair or replacement using a part or service not provided or authorized by Contractor.
3. Damage, malfunction, or degradation of electrical output resulting from purchaser or third party abuse, accident, alteration, improper use, negligence or vandalism, or from a Force Majeure.
4. Design and manufacturing defects in the components. Any manufacturer warranty is the Purchaser's sole remedy for design defects.
5. Any or all exclusions described in the manufacturer's warranty.
6. Normal wear and tear under normal operation.

**Suniva PV Panel Warranty**  
**Exhibit 1**  
**Limited Warranty for Products**

**A. Ten Year Limited Product Warranty:**

1. Suniva warrants that for ten years beyond the purchase of the Products (the "Product Warranty Term"), the Products will:
  - experience no mechanical adverse effects limiting solar module stability so long as the Product is correctly installed and used in accordance with the official Suniva maintenance and installation instructions
  - contain cable and connector plugs that remain safe and operational so long as the Product is professionally installed and not permanently positioned in water. This warranty does not cover damage to the cable caused by (a) abrasion on a rough lower surface caused by insufficient fixing or running of the cable unprotected over sharp edges, or (b) animals or insects.

The above Product warranty does not cover scratches, stains, mechanical wear, rust, mold, optical deterioration, discoloration and other cosmetic changes occurring after delivery to the extent such cosmetic changes do not result in deterioration in the Product's functional capability. Glass breakage is covered by the above warranty only so long as such damage was not caused by any cause external to the Product itself.

2. If the Products fail to conform to the above warranty during the Product Warranty Term and this has an effect on the functional capability of the Product, Suniva or its Supplier will remedy the failure by choosing one of the following options: (a) repair of the defective Product, (b) supply of replacement products, or (c) provide a financial remedy to the end user in the form of an appropriate residual value of the Products.

**B. Twenty-Five Year Limited Service Warranty:**

1. The effective power output of the Products will remain within a certain tolerance range of 3% within year one. The actual effective power output for each Product is identified by the factory power measurement at STC indicated in the Product invoice. End users can expect that the actual effective power output for the Products will decline by a small percentage annually over 25 years of usage (the "Service Warranty Term").
2. Suniva represents and warrants that the Products effective power output (a) will remain at or above 97% during the first year of operation, and (b) starting with the second year of Product operation will decline annually by no more than 0.7% through the end of the Service Warranty Term so that by the end of the Service Warranty Term the Product will achieve an effective power output of at least 80.2%. In the event the Product's effective power output fails to achieve the foregoing benchmarks, Suniva or its Supplier will remedy such failure by choosing to either (i) supply the end user with replacement products that comply with the foregoing performance benchmarks, (ii) repair the Products so that they comply with the foregoing benchmarks, or (iii) provide a financial remedy to the end user to compensate for the reduced Product performance. During the initial fifteen (15) years of the Service Warranty Term, Suniva will remedy a failure of the Limited Service Warranty by offering either to supply replacement products or repair the Products under options (i) or (ii) in the preceding sentence. At Suniva's discretion, following the initial fifteen (15) years of the Service Warranty Term, Suniva may also remedy the failure of the Limited Service Warranty by choosing to grant a financial remedy under option (iii) above.
3. Suniva does not warrant that any replacement products supplied under paragraph 2 above will be new products or products that are as good as new. End user acknowledges that Suniva may satisfy the replacement remedy in paragraph 2 above by supplying used and/or repaired products as replacements so long as the replacement products comply with the performance benchmarks set forth in paragraph 2.

**C. Additional Warranty Conditions:**

1. The Limited Service Warranty Term will not be extended even in the event of Product repair or replacement.
2. The Limited Service Warranty is subject to Suniva's confirmation of effective power output and actual power output using IEC 60904 standard test conditions. Final performance measurements shall be determined by a recognized measuring institute, a Nationally Recognized Test Lab (NRTL) such as Intertek ETL, or through Suniva's own measurements (assessment of measurement tolerances will be undertaken in accordance with EN 50380). The warranty does not include shipping costs to return Products, shipping costs for delivery of repaired or replacement products, costs of the installation or re-installation of products, or other expenses incurred by the end-customer or distributor.
3. All right, title, and ownership in and to Products that have been replaced pursuant to the above warranties revert to Suniva.
4. The warranty terms set forth in Paragraphs A and B above start on the date of original purchase of the Products.

**D. Assertion of Warranty Claim:**

You may assert a warranty claim under paragraphs A and B above only by (i) informing Suniva authorized Product distributor/dealer of the alleged defect in writing, or (ii) sending written notification of a warranty claim directly to Suniva at the address mentioned in paragraph G below if the distributor/dealer who sold you the Products is no longer in business. Any written notification of defect must include the date of purchase of the Products and be accompanied by the original sales receipt as evidence of the purchase. For a warranty claim to be valid, the written claim must be provided within six weeks of the occurrence of the defect. In the case of Product Warranty claims under paragraph A above, the occurrence of a defect is the first date upon which end user had knowledge of material and/or workmanship errors. In the case of Service Warranty claims under paragraph B above, the occurrence of a defect is the first date upon which end user had knowledge of reduced performance of the Products. Any return of Products shall be subject to Suniva's prior written approval.

**E. Use in accordance with this Limited Warranty:**

1. The above Limited Warranties are not available if the alleged defect is a result of the Product not being properly used, operated or installed. Suniva shall have no obligation to provide a remedy for a claimed defect if the defects are caused in whole or part by any cause other than the Products themselves. Such other causes may include, without limitation, the following:
  - a. Delays by any party (other than Suniva) in observing the assembly, operational and maintenance instructions or information, if such delays lead to defects and/or loss in Product performance.
  - b. Failure to properly exchange, repair or modify the Products.
  - c. Misuse of the Products.
  - d. Vandalism or destruction through external influences.
  - e. Improper storage or transport prior to installation if such improper actions lead to defects and/or a loss in Product performance.
  - f. Customer system defects or incompatibility of the customer or third party equipment with the Products if such defects or incompatibility lead to Product defects and/or a loss in Product performance.
  - g. Use of Products on mobile units, automobiles, trains, or watercraft.
  - h. External contaminants such as dirt or debris on the face-plate; damage from airborne contaminants.
  - i. Events beyond Suniva's reasonable control (commonly known as "Force Majeure" events), such as fire, floods, explosions, rock-falls, direct or indirect lightning strikes, or other extreme weather conditions such as hail, hurricanes, whirlwinds, or sandstorms.
2. Suniva is under no obligation to provide the remedies set forth in paragraphs A and B above if the manufacturer's labels or serial numbers on the Products have been changed, deleted, peeled off or caused to be unrecognizable.

**F. Exclusion of liability:**

The remedies set forth in this Limited Warranty are the exclusive remedies available to the end user. Suniva shall not be liable for damage, injury or loss arising out of or related to Products except as explicitly set forth in this Limited Warranty. Under no circumstances shall Suniva be liable for incidental, consequential, special or other indirect damages in any way connected with Products. Suniva's aggregate liability, if any, shall be limited to the Product purchase price paid by the end user.

**G. Warranty contact:**

Any communication with Suniva under this Limited Warranty shall be at the following address: Customer Service, Suniva, Inc., 5765 Peachtree Industrial Blvd, Norcross, GA 30092 USA.

**H. Choice of law:**

This Limited Warranty, including without limitation the rights and responsibilities granted hereunder, shall be governed and construed in accordance with the laws of the State of Georgia, without regard to the conflicts of law provisions thereof.

**I. Validity:**

The following table contains the Products to which this Limited Warranty applies. This Limited Warranty shall not apply to any product not specifically listed below.

**Model Family:**

OPT2XX-60-4-100	OPT2XX-60-4-1B0	OPTXXX-72-4-100	MVT2XX-60-5-100
MVTXXX-72-5-100	MVX2XX-60-5-701	MVX2XX-60-5-7B1	MVX2XX-60-5-801
MVX2XX-60-5-8B1	MVXXXX-72-5-801	MVXXXX-72-5-701	

**J. State Law:**

This Limited Warranty expressly excludes all other express or implied warranties, including without limitation the warranties of merchantability, noninfringement, and fitness for a particular purpose. This Limited Warranty gives the end user specific legal rights. The end user may have other rights that vary from state to state. Some states do not allow limitations on implied warranties or the exclusion or limitation of damages, in which case the above limitations may not apply to you.

**K. Severability:**

If any provision of this Limited Warranty is held unenforceable or illegal by a court or other body of competent jurisdiction, such provisions shall be modified to the minimum extent necessary to make them enforceable or legal, as the case may be.



## SMA America LLC Factory Warranty

**Note: this description of SMA Solar Technology America's limited factory warranty is effective on August 1, 2013 and supersedes all prior warranty descriptions.**

### 10 Year Warranty

A ten year warranty applies to the following products:  
Sunny Multigate-US, SB240-US, SB700-US, SB2000HF-US, SB2500HF-US, SB3000HF-US, SB3000-US, SB3800-US, SB4000-US, SB3000TL-US, SB4000TL-US, SB5000TL-US, SB5000-US, SB6000-US, SB7000-US, SB8000-US, SB6000TL-US, SB7000TL-US, SB8000TL-US, SB9000TL-US, SB10000TL-US, SB11000TL-US, STP 12000TL-US-10, STP 15000TL-US-10, STP 20000TL-US-10, STP 24000TL-US-10, WB3000-US, WB3800-US, WB4000-US, WB5000-US, WB6000-US, WB7000-US, WB8000-US

### 5 Year Warranty

A five year warranty applies to the following products:  
SB1100U, SWR1800U, SWR2100U, SWR2500U, SB3300U, SB3800U, SB6000U, SI4248U, SI4548-US, SI6048-US, SI5048U, ST6US, SMA Bluetooth® Repeater, Sunny Beam with Bluetooth®, Sunny WebBox, Sunny WebBox with Bluetooth®, Sunny SensorBox, SC/SB Combiner Boxes purchased after April 1, 2005.

The SMA factory warranty provides technical support, shipping costs, and repair or replacement part costs during the warranty period. The warranty period begins 3 months after shipment from SMA America or the date of commissioning, whichever can be proven to start later, subject to the conditions listed below.

### Warranty Conditions

SMA America will advance ship a new unit to the customer if the device is determined to be defective within the first 90 days after a new installation.

If a device is determined to be defective more than 3 months after installation, and during the SMA factory warranty period, one of the following services, as selected by SMA, will be performed at no charge:

1. Exchange for a refurbished device (of equivalent value according to model and age)
2. Repair the defective device at SMA's depot facility

In the case of an exchange, the remainder of the eligible warranty will be transferred to the replacement device.

If the warranty applies, and if SMA has a branch or service partner in the country where the device is operated, the transport costs are covered by SMA.

The SMA factory warranty includes a Service Call Rebate for eligible installers/dealer companies as follows:

1. Sunny Boy String Inverters and Sunny Island units are eligible for a \$150 Service Call Rebate
2. Sunny Tripower Inverters are eligible for a \$250 Service Call Rebate

1

US SO 107-0080-001 rev. 04



**Warranty Information for Hardware Manufacturers  
Commonly Sourced for DECK Monitoring Deployments**

**OLEA Kioks**

**Warranty:**

"Olea hereby warrants that each component manufactured or supplied directly by Olea will be free of defects in material and workmanship for a period of one (1) year following the date of invoice or shipment, whichever occurs first (the "Warranty Period"). Any product invoiced but not shipped will have its Warranty Period started as of that date. During the Warranty Period, Customer shall return defective parts to Olea at Customer's expense. Olea shall repair or replace any defective component within thirty (30) days of receipt, at Olea's expense, including all return shipping expenses. Notwithstanding the foregoing, this warranty shall include, without limitation, all metal and plastic parts, fabrications, and formations whether or not a warranty is provided by the manufacturer, subcontractor, or supplier thereof. Olea does not warrant any component supplied by customer or its suppliers. Olea's warranty may be voided by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer or Customer's service organizations, removal or alteration of part identification, or failure caused by a product for which Olea is not responsible."

**Olea Warranty Disclaimer:**

"WE DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES OF ANY NATURE EXCEPT THOSE EXPRESSLY STATED HEREIN. WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR FOR ANY DAMAGES OR DELAYS CAUSED BY CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, LABOR PROBLEMS, SHORTAGE OF GOODS OR RAW MATERIALS, FIRE, FLOOD, WEATHER OR OTHER ACTS OF GOD."

[Olea offers an extended warranty option – they can be contacted at [www.olea.com](http://www.olea.com)]

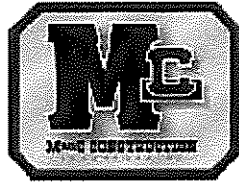
+++++

**ELO Touchscreens -**

<http://www.elotouch.com/HowToBuy/NorthAmerica/termcond.asp#tdwarranty>

+++++





## WARRANTY

We hereby guarantee that the Work performed for the construction of:

has been performed in accordance with the Drawings and Specifications and that the Work as installed will fulfill the requirements of the Guarantee included in the Specifications. We agree to repair or replace any or all of our Work, together with any adjacent Work which may be displaced by so doing, that may prove to be defective in its workmanship or materials within a period of ONE (1) year from the date of acceptance of the above named project by the Owner, \_\_\_\_\_ without any expense whatsoever to the said Owner, ordinary wear and tear and unusual abuse or neglected excepted.

In the event of our failure to comply with the above mentioned conditions within thirty (30) days after being notified in writing by the Owner or Contractor, we collectively or separately do hereby authorize the Owner or contractor to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges there from upon demand.

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



# MANUFACTURER'S LIMITED PRODUCT WARRANTY

### WARRANTY

Unirac, Inc. ("Unirac") warrants to the buyer ("Buyer") at the original installation site ("Site") that any of the SolarMount components designed and manufactured by Unirac and installed at the Site ("Product") shall be free from defects in material and workmanship which substantially impair their ability to perform their intended function, as referenced in the Unirac Product Information, for a period of ten (10) years - except that any factory-applied anodized finish is warranted to be free from substantial manufacturing-related visible peeling or cracking or chalking under normal atmospheric conditions for a period of five (5) years ("Finish Warranty") - from the earlier of 1) the date the installation of the Product at the Site is substantially complete, or 2) 120 days after the purchase of the Product by the original Buyer of the Product ("Warranty Period").

### WARRANTY TRANSFERENCE

Buyer may transfer this Warranty to subsequent Site owners, or if original Buyer is a contractor, to the Site owner, so long as the transferee agrees to the terms of this Limited Warranty as if it were the Buyer. Proof of purchase is required for any warranty claim.

### FINISH WARRANTY LIMITATIONS

The Finish Warranty does not apply to any issues caused by foreign residue deposited on the finish, or an installation in atmospheric conditions more corrosive than normal conditions. The Finish Warranty is VOID if the practices specified by AAMA 609 & 610-02 - "Cleaning and Maintenance for Architecturally Finished Aluminum" ([www.sama.net.org](http://www.sama.net.org)) are not followed.

### WARRANTY LIMITATIONS

This Limited Warranty covers only the Product, and not PV modules, electrical components and or wiring used in conjunction with the Product or any other materials not provided by Unirac. Goods which may be sold by Unirac, but which are not designed or manufactured by Unirac are not warranted by Unirac, are sold only with the warranties, if any, of the original manufacturers thereof. This Limited Warranty does not cover damage to the Product that occurs during its shipment, storage, installation or use, or from force majeure acts including fire, flood, earthquake, storm, hurricane or other natural disaster, war, terrorist activities, acts of foreign enemies and criminal acts. This Limited Warranty does not cover damages or problems caused by the connection to or use of alternative materials not purchased from Unirac Price List. This Limited Warranty shall be void if A) installation of the Product is not performed in accordance with the Unirac Product Information, B) if the Product has been modified, repaired, or reworked in a manner not previously authorized by Unirac in writing, or C) the Product is installed in an environment for which it was not designed, each as determined by Unirac in its sole discretion.

### WARRANTY CLAIMS

If, within the Warranty Period, the Product shall be proven at Unirac's sole discretion to be nonconforming, then Unirac shall repair or provide a replacement for the nonconforming Product, or any nonconforming part thereof, at Unirac's option. Any such repair or replacement does not cause the beginning of new warranty terms, nor shall the Warranty Period of this Limited Warranty be extended. Unirac's aggregate liability for all warranty claims shall not exceed the original Purchase Price of the nonconforming Product. Buyer shall bear all costs of shipment or transportation related to the repair or replacement of the nonconforming product. Such repair or replacement shall be Buyer's sole remedy and shall fulfill all of Unirac's obligations with respect to the Product and all warranty claims.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSED ABOVE, UNIRAC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

UNIRAC SHALL NOT BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR DIRECT, INDIRECT, SPECIAL, PUNITIVE, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS, CLAIMS OF THIRD PARTIES OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF ANY DEFECT OR NONCONFORMITY IN THE PRODUCT COVERED BY THIS WARRANTY, EVEN IF CAUSED BY THE NEGLIGENCE OF UNIRAC. ALL SUCH DAMAGES AND EXPENSES ARE HEREBY EXCLUDED.

EFFECTIVE DATE: FEBRUARY 28, 2014

PUB140228

<http://www.unirac.com/residential/unirac-warranty>

*End of Exhibit 6-2*

**Exhibit 7**

**Form of Attestation**

**Environmental Attribute Attestation**

SolEd Solar Holdings I, LLC ("Seller") hereby transfers and delivers to the Marinwood Community Services District ("Purchaser") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy (as such terms are defined in the Solar Power Purchase Agreement ("Agreement") dated [\_\_\_\_\_], between Purchaser and Seller) arising from the generation of the energy by the Solar System described below:

Facility name and location: Marinwood CSD Community Center \_\_\_\_\_  
EIA ID #: \_\_\_\_\_  
CEC ID#: \_\_\_\_\_  
ISO Meter ID#: \_\_\_\_\_  
Fuel Type: \_\_\_\_\_  
Capacity (MW): \_\_\_\_\_  
Commercial Operation Date: \_\_\_\_\_

Dates	MWhs generated	Dates MWhs generated
_____	_____	_____
_____	_____	_____
_____	_____	_____

In the amount of one Environmental Attribute for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

- To the best of its knowledge, the information provided herein is true and correct;
- This transfer to Purchaser is the one and only transfer of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
- The System generated the energy in the amount indicated as undifferentiated energy; and

(Check one)

Seller owns the System, and Purchaser owns the Facility at which the System is located.

To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy have been generated by the System and sold by the Seller to the Purchaser.

This serves as a transfer from Seller to Purchaser all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy.

Contact Person: Name: \_\_\_\_\_ Phone: \_\_\_\_\_

WITNESS MY HAND,

Seller: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**End of Exhibit 7**

**Exhibit 8**

**Milestone Schedule**

The following Mandatory Milestones shall be reflected in the schedule required in Exhibit 6 and shall represent the dates upon which each milestone is to be achieved for the site in the Agreement.

**Mandatory Milestones (Number of Days added to NTP)**

<b>Mandatory Milestone</b>	<b>Community Center</b>		
<b>Design Notice to Proceed</b>	Triggered by CSD Approval		
50% Schematic Design submittal	Design NTP+25		
90% Design Development submittal	Design NTP+40		
100% Construction Documents submittal for permitting	Design NTP+50		
Approved Construction Documents – All Agency Sites	Design NTP+80		
<b>Construction Notice to Proceed</b>	Triggered by CSD Approval		
Mobilization – All Agency Sites	NTP+40		
Substantial Completion – All Agency Sites	NTP+70		
Final Completion – All Agency Sites	NTP+90		

Seller shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

**Agreement Submittals**

<b>Submittal</b>	<b>Submittal Date</b>	<b>Date</b>
<b>I. System Design</b>		
e. System Design Documentation	At each design milestone	TBD
f. Warranties	At Construction Documents milestone	TBD
g. Testing Plan	At Construction Documents milestone	TBD
h. Power production modeling	At Construction Documents milestone	TBD
<b>II. Procurements and Construction</b>		
c. Safety Plan	30 days before commencement of construction	TBD
d. As-built Documentation	After completion of Proving Period	TBD
<b>III. Testing</b>		
e. Acceptance Test Results	After Acceptance Test	TBD
f. Startup Test Results	After Startup Test	TBD
g. Monitoring Data (Proving Period)	Continually throughout Proving Period	TBD
h. Proving Period Report	30 days after System Startup	TBD
<b>IV. Training</b>		
d. Training Materials	30 days before Training Session	TBD
e. Monitoring Manual	30 days before Training Session	TBD
f. Operations & Maintenance Manual	30 days before Training Session	TBD

**End of Exhibit 8**

Exhibit 9

**Insurance Requirements**

**[CSD to provide]**

**End of Exhibit 9**

**Exhibit 10**

**Seller and Purchaser Agreed Responsibilities**

**[Intended to cover such things as tree removal, tree trimming, painting, etc., that are not otherwise specified in the document]**

**Tree Removal/Trimming**

**Sunetric:** Will remove all vegetation including trees that are within the footprint of the PV arrays.

**Marinwood:** Will remove trees identified at site walks with vendor at \_\_\_\_\_ that shade PV array sites, and will be responsible for trimming trees that shade arrays during contract term.

**End of Exhibit 10**