



STAFF REPORT

City Council
Meeting Date: 5/21/2024
Staff Report Number: 24-091-CC

Public Hearing: **Adopt a resolution authorizing the city manager to execute power purchase agreements to install solar photovoltaic systems on four City facilities through the Peninsula Clean Energy Solar and Storage for Public Buildings GovPV program and make the necessary findings for Government Code §§4217.12 and 4217.13**

Recommendation

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute power purchase agreements (PPAs) for solar photovoltaic (PV) systems for the Belle Haven Child Development Center (BHCDC), Burgess Pool, City Hall and Menlo Park Library (Attachment A) through the Peninsula Clean Energy (PCE) Solar and Storage for Public Buildings GovPV program.

Policy Issues

The City Council declared a climate emergency (Resolution No. 6535) committing to accelerate actions to address climate change at a local level and adopted the 2030 Climate Action Plan (CAP) (Resolution Nos. 6575 and 6621) with a goal to be carbon neutral by 2030. CAP strategy No. 5 aims to eliminate fossil fuel use in City operations by 2030. The installation of solar PV systems at City facilities is consistent with the strategy to meet this goal.

Background

PCE is the not-for-profit, community-controlled electricity provider for San Mateo County and the City of Los Banos with a mission to reduce greenhouse gas emissions by expanding access to clean and affordable energy solutions. PCE provides 100% carbon free electricity and administers programs to support electrification, which is the transition away from fossil-fuel-burning equipment to electric-powered equipment. PCE launched the GovPV program to accelerate renewable energy projects at local government facilities. Through the GovPV program, solar PV systems are designed, installed, operated and maintained with no upfront cost to the participating agencies. The electricity produced by the on-site solar PV system is provided to the agencies for purchase via a PPA. The PPA rate for electricity offered is significantly less when compared to the cost of grid energy. Additionally, the PPA rate has no annual escalation over the 20-year term. The savings between the cost of grid energy versus the cost of on-site solar is directly realized by the participating agencies. At the end of the 20-year term, the agencies have the option to purchase the system, extend for five years or have PCE remove the system. PCE has successfully installed systems for their first cohort of public agencies. In January 2023, the City was accepted to join 17 other agencies in the second GovPV cohort.

PCE designed the GovPV program to leverage economies of scale by combining projects from multiple agencies to obtain more competitive pricing from the selected solar PV provider and bring down costs for

Menlo Park in-turn, streamline procurement, and reduce the amount of time required by City staff while obtaining environmental, economic and other community benefits.

Staff worked with PCE to identify facilities that would meet the program requirements. Key criteria include the remaining useful life of the roofs and the PV system size based on the typical electricity usage of the facilities.

In 2022, the California Public Utilities Commission approved Net Energy Metering (NEM) 3.0, which reduced the amount paid by utility companies to customers for excess solar energy provided to the grid during times with ample renewable energy. When the start date for NEM 3.0 was announced in early 2023, PCE accelerated site design and planning elements of the program to submit before the April 14, 2023 deadline that would allow participating cities to still qualify for more favorable rates under the prior NEM 2.0 rate structure. If the PPAs are approved, the four city facilities selected to participate in GovPV will operate under NEM 2.0 provided all subsequent deadlines are met and the PV systems are installed and energized by April 14, 2026.

On Oct. 18, 2023, the Environmental Quality Commission (EQC) reviewed an update on the program and unanimously advised the City Council to continue to participate in the GovPV program.

On Dec. 5, 2023, staff provided an informational item (Attachment B) to the City Council outlining the key features and timeline for the GovPV program, the planned city roof replacements for three of the four selected facilities, as well as the City's historical participation in group procurement programs. PCE agreed to allow City staff to coordinate directly with the solar provider to also replace the roofs for the participating facilities and shift designs from carport to rooftop systems.

In January 2024, PCE selected McMillan Electric Co. as the provider who would oversee installations, operations and maintenance of systems for the GovPV program. In February 2024, City staff led McMillan Electric Co. staff on site visits and discussed updates to the designs to move the systems to the roofs to preserve as many trees as possible and improve project financials. The PPAs included as Attachment A reflect pricing for the updated system designs.

Information about the final designs, program timing and interrelated projects and operational cost savings are included in the analysis and fiscal impact sections to follow.

Analysis

Installing PV systems to generate electricity on site demonstrates climate action, reduces the impact of City operations on the grid, and provides utility cost savings to the City. PV system installations also allow the City to consider participation in future battery storage programs to enhance community resilience.

Facilities overview

PCE staff submitted preliminary interconnection applications to Pacific Gas and Electric (PG&E) for the BHCDC, Burgess Pool, City Hall and the Menlo Park Library. The PV systems would generate enough electricity to offset the majority of the buildings' electrical loads. Electricity to meet facility electrical loads is purchased in units of kilowatt-hours (kWh). The price per kWh (PPA rate) identified in the PPA will be provided "at cost" by PCE to cover equipment, installation, maintenance and administrative expenses with no annual escalation rate. There are limitations on sizing PV systems to accommodate planned electrical load increases from new equipment or electrification projects, including that equipment would need to be installed ahead of the solar PV system. Additionally, under NEM 2.0, PV system sizes cannot exceed 120% of the current electricity usage. Another factor in determining systems sizes relates to the underlying PPA

structure, and cost obligations for oversizing systems. Through the PPA model, the City is responsible to pay for power generated by the system at the PPA rate. The City would pay the PPA rate for any electricity generated beyond the usage for each facility and then sell back the excess electricity to the grid at the NEM 2.0 rate. While this rate is better than the NEM 3.0 rate, it is still a much lower rate than the PPA rate and for that reason, it is not advantageous to oversize PV systems financed through a PPA. Table 1, below, shows the preliminary PV system details including the estimated annual electricity production and usage and the estimated dollar amount that PCE is anticipated to spend to install solar at each facility.

Facility	System size (kW)	Estimated average annual electricity production (kWh)	Estimated 2023 electricity usage (kWh)	Estimated percentage of electricity demand generated
BHCDC	33.1	50,703.00	40,100.00	126.40%
Burgess Pool (located on Gymnastics Center roof)	54.6	84,134.00	162,500.00	51.80%
City Hall	379.7	560,548.00	576,887.00	97.20%
Menlo Park Library	229.9	355,074.00	384,000.00	92.50%

Future electrification

On June 27, 2023 the City Council approved \$138,000 with the Capital Improvement Program (CIP) budget for electrification of equipment at BHCDC in order to meet the minimum system size requirements of the program. It is anticipated that costs to electrify the BHCDC will be higher and staff are exploring grant opportunities prior to initiating the project. The planned electrification should bring the usage closer to the estimated annual production for the PV system. Electrification of Burgess Pool heating was not included as a planned increase in electrical load for the purposes of sizing the PV system due to restrictions on tax credit applicability for PV systems powering pool heating loads. The planned system for the Burgess Pool would support non-pool-heating electrical loads. This does not restrict the City, however, from electrifying the pool heating or other equipment at other facilities in the future. The City has plans to electrify all buildings as part of the CAP Strategy No. 5 goal to eliminate fossil fuels from city operations by 2030. Load increases are expected as space and water heating equipment is converted from gas-burning to electric.

Roof replacements and system modifications

The proposed designs (Attachment C) included with the PPAs have been updated for the facilities to move the systems to the roofs of the buildings instead of carports where possible. Roof-mounted systems are advantageous because they limit the impact on trees and are less expensive resulting in a lower PPA rate. The program requirements stipulated that roof-mounted systems be installed on roofs that have a minimum remaining useful life of at least 20 years, the length of the PPA. The systems themselves may last over 40 years if well maintained. The Burgess Pool system would be located on the Arrillaga Family Gymnastics Center roof, which is directly adjacent to the Burgess Pool and has sufficient remaining useful life. In anticipation of this program, the City Council approved budget intended to cover the costs for roof replacements for the BHCDC, City Hall and the Menlo Park Library, along with the City Council Chambers, which is also in need of a roof replacement but determined not to be a good candidate for solar panels due to its relatively small size and proximity to shading trees. City staff are working to accelerate the roof replacements relative to their remaining useful life ahead of the program construction schedule. A bid package to bring on an on-call roofing contractor was released April 26 and closes May 23. Staff expect to receive suitable bids, and make a selection to bring a contract to the City Council for authorization in June 2024. Regardless of the GovPV program, proactive replacement of the roofs may result in long-term

savings to the City as compared to emergency repair at the end of the roof's life.

Projected electricity costs/savings

There is no expected upfront construction cost to the City for the installation of the PV systems. The systems are expected to provide cost savings, and those savings are expected to grow over time due to avoided increases in utility costs that are expected to rise as much as 5% or more per year according to proposals by PG&E at the California Public Utilities Commission. PCE is proposing a flat rate, without an annual escalation. The prices would be fixed for the 20-year term of the PPA for each facility. Final pricing may increase by no more than 5% if additional costs are incurred during construction. The City would be eligible to walk away from the project without penalty if construction costs increase the PPA price beyond 5%. Table 2 in the Impact on City Resources section illustrates the expected savings.

Government Code §§4217.12 and 4217.13

California Government Code §4217, specifically §§4217.10 through 4217.18, is a procurement policy that enables the financing and development of infrastructure improvement projects that could result in energy and/or cost savings to public agencies. To qualify to use Government Code §4217.12, the project or agreement would need to demonstrate that the anticipated cost under the contract will be less than the anticipated cost to the City that would have been paid in the absence of this PPA. In the case of the proposed PPAs, the agreements qualify as the price for the electricity generated would be less than what the City currently pays and the rate would remain fixed over time. Government Code §4217.13 requires the proposed financing arrangement be in the best interest of the city and the funds for the repayment of the financing must be projected to be available from funding that otherwise would have been used for the purchase of electrical energy required by the City. The anticipated savings from the systems would similarly qualify the project to use Government Code §4217.13.

Early purchase

The City would have the option to purchase the systems at year six. Early purchase would give the City the opportunity to realize greater operational savings. Staff estimate purchasing the system early could pay for itself within a minimum of eight to 16 years, depending on the facility usage and fair market value of the system at year six. These estimates do not account for potential revenues from the sale of excess electricity generated by the systems.

Tree conflicts

Earlier iterations of the designs included carports in the parking lot near the Menlo Park Library and five carports in the parking lot between City Hall and the Arrillaga Family Gymnastics Center and Burgess Pool that would have required the removal of over 20 trees. In the proposed PPA layouts, there are only two solar carports proposed for the City Hall system. The proposed layout of the systems is included as Attachment C. One carport would be installed over a group of 10 parking spaces adjacent to Laurel Street. The second carport would cover roughly 19 spaces near Burgess Field. Three non-heritage city-owned trees were located in landscape areas near the proposed sites for the carport installations. The City's arborist identified one Valley Oak tree near Burgess Field as viable for relocation. While the tree was dormant, staff moved the tree to the corner of Pierce and Willow Road in the Belle Haven neighborhood. The two remaining trees would need to be removed. Staff would work with a project arborist to evaluate the remaining trees and identify suitable replacement locations on site.

Next steps

Staff will continue to accelerate work to electrify the equipment at the BHDC, and replace the roofs for the BHDC, City Hall, and Menlo Park Library by the end of this year. Pending execution of the PPAs, staff will also continue to work with McMillan Engineering Co. to finalize the system designs submitted with the interconnection applications and support system installations ahead of the April 14, 2026 final NEM 2.0

deadline.

Impact on City Resources

There would be no upfront construction cost to install the PV systems and no operation or maintenance costs. The City would pay for the energy produced by the PV systems through monthly electricity bills for the facilities. Cost savings between 12 – 40% are expected on a per kilowatt-hour (kWh) basis. This could result in approximately \$1.6 million in savings over the 20-year term of the PPA. Table 2 identifies the expected cost savings based on the final PPA pricing details for each facility.

Table 2: Estimated electricity bill cost savings					
Facility	Blended average electricity price today (\$/kW)	PPA electricity price (\$/kWh)	Estimated average annual savings	Total estimated savings over 20-year PPA term	
BHCDC	\$0.42	\$0.23	\$18,545	\$370,900	
Burgess Pool	\$0.27	\$0.23	\$13,280	\$265,600	
City Hall	\$0.27	\$0.26	\$74,040	\$1,477,300	
Menlo Park Library	\$0.27	\$0.23	\$56,045	\$1,120,900	
Total			\$161,910	\$3,234,700	

The fiscal year 2023-24 capital budget includes sufficient funding for the roof replacements identified for accelerated replacement to participate in this program. There are \$700,000 in available funding from general capital funds for building exterior improvements and \$1,017,000 in available funding from general capital funds for the Main Library (Menlo Park Library) improvements. The Menlo Park Library improvement project is supported by the Building Forward Library Infrastructure Grant, which provided \$509,179 to the City and requires a 50% funding match. The State provided \$254,590 to the City upon submission of all required items. The remainder would be paid to the City upon completion of the project.

Environmental Review

The PPAs for installation of PV systems at City facilities are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines §§15378, 15301(b) (Existing Facilities) and are also statutorily exempt from CEQA pursuant to Public Resources Code §21080.35 (Rooftop and Shade Structure Solar).

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting and a notice was published in the Examiner two weeks prior to the meeting in accordance with Government Code §§4217.12 and 4217.13.

Attachments

- A. Resolution authorizing the city manager to execute PPAs to install PV systems on four city facilities through the PCE GovPV program and make the findings for Government Code §§4217.12 and 4217.13
- B. Hyperlink – Dec. 5, 2023 Staff Report No. 23-275-CC: menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2023-

[meetings/agendas/20231205/i5-20231205-cc-pce-public-building-program.pdf](#)

C. Proposed PV system layouts

Report prepared by:

Ori Paz, Management Analyst II

Report reviewed by:

Rachael Londer, Sustainability Manager

Azalea Mitch, Public Works Director

RESOLUTION NO. XXXX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO EXECUTE POWER PURCHASE
AGREEMENTS TO INSTALL SOLAR PHOTOVOLTAIC (PV) SYSTEMS ON
FOUR CITY FACILITIES THROUGH THE PENINSULA CLEAN ENERGY
GOVPV PROGRAM AND MAKE THE NECESSARY FINDINGS FOR
GOVERNMENT CODE §§4217.12 AND 4217.13**

WHEREAS, the City of Menlo Park has declared a climate emergency and adopted a Climate Action Plan (CAP) with strategies to reduce emissions of greenhouse gasses (GHGs) within the City; and

WHEREAS, the CAP includes strategy goal No. 5 to eliminate fossil fuel use from municipal operations by 2030; and

WHEREAS, deploying solar power on agency facilities will lower energy costs and insulate the agency from rising utility rates, and

WHEREAS, Peninsula Clean Energy Authority (PCE) is a not-for-profit electricity provider and joint powers authority serving all of San Mateo County with a mission to reduce GHGs, and operates a Solar and Batteries for Public Buildings GovPV program that coordinates bulk purchase and installation of solar PV systems for participating agencies through power purchase agreements; and

WHEREAS, the Environmental Quality Commission (EQC) reviewed an update on the program and on October 18, 2023, and unanimously advised the City Council to continue to participate in the GovPV program; and

WHEREAS, the City Council received an informational item inclusive of the EQC recommendation and additional information during the December 5, 2023 meeting; and

WHEREAS, the GovPV program would result in the installation of solar PV systems at Belle Haven Child Development Center, Burgess Pool, City Hall, and the Menlo Park Library; and

WHEREAS, the power purchase agreements for installation of solar photovoltaic systems at City facilities are expected to generate savings over the lifetime of the systems and the anticipated costs for electricity purchased under the contract will be less than the anticipated cost to the City that would have been paid in the absence of this power purchase agreement, qualifying the project to use Government Code §4217.12; and

WHEREAS, the proposed financing arrangement is in the best interest of the City and the funds for the repayment of the financing are projected to be available from funding that otherwise would have been used for purchase of electrical energy required by the City, qualifying the project to use Government Code §4217.13.

NOW, THEREFORE BE IT RESOLVED, that the City Council of Menlo Park hereby resolves:

- (a) The power purchase agreements for installation of solar photovoltaic systems at City facilities are expected to generate savings over the lifetime of the systems, qualify for use of Government Code §4217.12 and Government Code §4217.13 and are categorically exempt

from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines §§15378, 15301(b) (Existing Facilities) and are also statutorily exempt from CEQA pursuant to Public Resources Code §21080.35 (Rooftop and Shade Structure Solar).

- (b) The City Manager is authorized to execute the power purchase agreements attached hereto and incorporated herein by this reference as Exhibit A and any and all documents necessary to deploy solar photovoltaic systems at the Belle Haven Child Development Center, Burgess Pool, City Hall and Menlo Park Library in partnership with the City's public power provider, Peninsula Clean Energy, on behalf of the City of Menlo Park.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the ___ day of May, 2024, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of May, 2024.

Judi A. Herren, City Clerk

Exhibits:

- A. Belle Haven Child Development Center Solar Power Purchase Agreement – Peninsula Clean Energy Authority
- B. Burgess Pool Solar Power Purchase Agreement – Peninsula Clean Energy Authority
- C. City Hall Solar Power Purchase Agreement – Peninsula Clean Energy Authority
- D. Menlo Park Library Solar Power Purchase Agreement – Peninsula Clean Energy Authority

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of _____, 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	Belle Haven Child Development Center		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A to Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

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

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point and Premises
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Performance Guaranty
- Exhibit 5** New Roof Terms and Conditions

Purchaser: City of Menlo Park

Seller: Peninsula Clean Energy Authority

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: Shawn Marshall
Title: Chief Executive Officer
Date: _____

Exhibit 1

Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in **Exhibit 2** and has obtained all necessary Approvals (as defined in **Section 5(b)** of **Exhibit 3**), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$0.234 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in **Exhibit 2**.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
 - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in **Section 2(c)** of **Exhibit 3**, the Contract Price excludes the following:
 - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
 - b. Tree removal, tree trimming, mowing and any landscape improvements.
 - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - d. Removal of existing lighting, light poles, or concrete light post bases.
 - e. Roof membrane maintenance or reroofing work.
 - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
 - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
 - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Resolution No. XXXX
Termination Payment Schedule:
Page 5 of 113

Contract Year	Termination Payment (\$)
1	\$195,217
2	\$188,226
3	\$181,266
4	\$174,338
5	\$167,444
6	\$160,583
7	\$153,758
8	\$146,968
9	\$140,216
10	\$133,502
11	\$126,828
12	\$120,194
13	\$113,603
14	\$107,054
15	\$100,550
16	\$94,091
17	\$87,680
18	\$81,317
19	\$75,004
20	\$68,743

“**Contract Year**” means the year commencing on the Commercial Operation Date and each subsequent year commencing on the anniversary of the Commercial Operation Date.

Exhibit 2

System Description, Delivery Point and Premises

1. System Location: 410 Ivy Dr, Menlo Park, CA 94025
2. System Size (DC kW): 33.1 (AC kW): 34.6
3. System Description (Expected Structure, etc.): Rooftop
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location at the Premises;
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
 - e. Construction assumptions (if any).

Schedule A

1. Physical building address: 410 Ivy Dr, Menlo Park, CA 94025
2. Number of Stories: 1
3. Total Square Footage: 6,980
4. Year Built: 1998
5. Year of any mechanical/electrical updates: 2017
6. Type of Construction, (example; wood frame, masonry, steel): Wood frame
7. Description/ Type of roof structure/system: Roofing, Built-Up; Metal; Asphalt Shingle, 30-Year Premium
8. Confirm whether the building is sprinklered: Yes
9. Describe any additional security measures, (example: video surveillance, etc.): N/A

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.

Exhibit 3

General Terms and Conditions

Exhibit 3 Table of Contents

1. PURCHASE AND SALE OF ELECTRICITY	1
2. TERM AND TERMINATION	1
3. BILLING AND PAYMENT; TAXES	1
4. RECS AND INCENTIVES	2
5. PROJECT COMPLETION	3
6. INSTALLATION, OPERATION AND MAINTENANCE.....	4
7. MISCELLANEOUS RIGHTS AND OBLIGATIONS OF THE PARTIES	5
8. RELOCATION OF SYSTEM	6
9. REMOVAL OF SYSTEM UPON TERMINATION OR EXPIRATION.....	6
10. MEASUREMENT	7
11. DEFAULT, REMEDIES AND DAMAGES	7
12. REPRESENTATIONS AND WARRANTIES	10
13. INSURANCE	11
14. OWNERSHIP; OPTION TO PURCHASE.....	11
15. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.....	12
16. CHANGE IN LAW.....	14
17. ASSIGNMENT AND FINANCING.....	14
18. CONFIDENTIALITY	15
19. GENERAL PROVISIONS.....	16

Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.

3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
 - ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").
- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's City Council for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive,

and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

5. **Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
 - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

c. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller or Purchaser, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that

such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the forty-eight (48) hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or

repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller's determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

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

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser's site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act ("**OSHA**") requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a

manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.

- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight (“**Insolation**”) is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a “**Lien**”) on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's

structures of any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
 - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
 - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
 - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

- d. **Meter Testing.** Purchaser may require Seller to cause the Meter to be tested once at any time during the Term at Seller's cost (an "**Initial Meter Test**"). After the Initial Meter Test, Purchaser may request that Seller cause the Meter to be tested only upon Purchaser's reasonable basis for belief that a Meter Inaccuracy (as defined below) exists, at Seller's cost (a "**Second Meter Test**"). In the absence of a Meter Inaccuracy as demonstrated by a Second Meter Test, any future Meter testing shall be at Purchaser's sole cost and expense. If any Meter test demonstrates inaccuracy of the Meter of greater than two percent (2%) over the course of a Contract Year (a "**Meter Inaccuracy**"), then Seller shall credit any overpayment by Purchaser against, or add any underpayment by Purchaser to, the next monthly invoice it provides to Purchaser. Purchaser shall have the right to witness any Meter test.

11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is 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 ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further

reasonable period of time, not to exceed ninety (90) days;

- iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
 - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
 - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
 - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this Exhibit 3, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
 - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
 - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior

- written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the “**Seller Termination Payment**”). The Seller Termination Payment determined under this Section 11(b)(iii) cannot be less than zero.
- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
- v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
- vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations 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. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
 - 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 is bound.
 - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
 - 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. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.
- c. **Seller's Warranties.**
- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
 - ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING

OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN **EXHIBIT 4** REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. Insurance.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
 - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in **Section 13(a)** shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is 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.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. Ownership; Option to Purchase.

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
 - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
 - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
 - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form

mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

- v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

- i. **Early Purchase Option.** Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the "**Early Purchase Option Period**"), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of **Exhibit 1**. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. **Exercise of Option.** 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 System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System ("**End of Term Option to Purchase**"). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. **Title Transfer; Warranties; Manuals.** If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers' warranties shall transfer to Purchaser upon System Owner's receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold "as is, where is, with all faults." Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).

b. **Permission to Operate Indemnification.** Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser's breach of Purchaser's obligations under Section 5e.

c. **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 may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

d. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "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.

e. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- g. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any liability.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

17. **Assignment and Financing.**

- a. **Assignment.**
 - i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
 - ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
 - iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or

System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

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

18. Confidentiality.

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

- b. **Permitted Disclosures.** Notwithstanding Section 18(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
- iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov't Code Sections 6254 and 6255.
- iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
- v. Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably

injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of Exhibit 1, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this Exhibit 3 shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the

other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9.

- h. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of Exhibit 3

Exhibit 4
Performance Guaranty

In consideration for Purchaser’s entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority (“**Seller**”) and the Purchaser related to the System at the Premises (the “**PPA**”), this Performance Guaranty (this “**Guaranty**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Guarantor below (the “**Effective Date**”).

Purchaser:		Guarantor:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Project Name	Belle Haven Child Development Center		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst (“**Estimated Production (Annual kWh)**”) as set forth in **Table 1.A** below (such guaranteed generation, the “**Guaranteed Production (Annual kWh)**” set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.

A. Guarantor will use local weather data to adjust the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) at a Typical Meteorological Year (TMY) weather station reasonably close to the facility; (ii) satellite data provided by a third-party vendor of Seller; or (iii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

Table 1.A, projected production values as measured at a TMY weather station reasonably close to the facility:

Contract Year	Estimated Production (Annual kWh)	Guaranteed Production (Annual kWh)
Year 1	50,703	48,168
Year 2	50,450	47,927
Year 3	50,198	47,688
Year 4	49,947	47,449
Year 5	49,697	47,212
Year 6	49,448	46,976
Year 7	49,201	46,741
Year 8	48,955	46,507
Year 9	48,710	46,275
Year 10	48,467	46,044
Year 11	48,225	45,813
Year 12	47,983	45,584
Year 13	47,743	45,356
Year 14	47,505	45,130
Year 15	47,267	44,904

Resolution No. XXXX Year 16	47,031	44,679
Page 29 of 113 Year 17	46,796	44,456
Year 18	46,562	44,234
Year 19	46,329	44,013
Year 20	46,097	43,792

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

Guarantor:

Signature:

Printed Name: Shawn Marshall

Title: Chief Executive Officer

Date:

Purchaser:

Signature:

Printed Name:

Title:

Date:

Exhibit 5
Terms and Conditions
New Roof Project Sites

1. **Defined Terms.** Terms capitalized but not defined herein shall have the meaning set forth in the Agreement.
2. **New Roof.** The Parties hereby agree and acknowledge that Purchaser plans to repair or replace the roof of the Burgess Pool prior to Commencement of Installation of the System and that, as of the Effective Date, such roof is not ready for System installation (each such roof, a “New Roof”).
3. **Seller’s Contractor.** As soon as reasonably practical after the Effective Date, Seller shall provide Purchaser with notice information for any contractor engaged by Seller in accordance with the Agreement (“Seller’s Contractor”).
4. **Installation Readiness Date; Redesign.** As used herein, “Installation Readiness Date” means the date on which a New Roof is ready for attachment install and such New Roof is ready, available and accessible for Seller’s Contractor to commence installation of the System. As soon as reasonably practical after Purchaser determines that the Installation Readiness Date is achieved, Purchaser shall provide Seller and Seller’s Contractor written notice of the same. The Parties hereby acknowledge and agree that if the Installation Readiness Date is not achieved by January 1, 2026 (the “New Roof Installation Readiness Deadline”), then the System is unlikely to remain eligible to qualify for the Utility’s net metering 2.0 (“NEM2”) tariff and the anticipated value of the System’s electricity output may differ from such anticipated value if the System were to remain eligible to qualify for NEM2. Therefore, the Parties agree that if the Installation Readiness Date is not achieved by the New Roof Installation Readiness Deadline, then Purchaser may, within twenty (20) days after the New Roof Installation Readiness Deadline, request that Seller revise the System design in accordance with Purchaser’s reasonable requests, at Purchaser’s sole cost and expense. Seller shall deliver to Purchaser such revised System design, including any resulting changes to Section 6 of Exhibit 1, changes to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or increases to the Contract Price, within thirty (30) days after Purchaser’s request, during which thirty (30) day period the Parties shall cooperate in good faith on such revised System design. Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised System design and any such resulting changes in writing. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, such disapproval shall be deemed Purchaser’s decision to use the original System design. If Purchaser approves a revised System design in accordance with this Section 2 of Exhibit 5 and such revised design will result in a change to Section 6 of Exhibit 1, a change to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or an increase to the Contract Price as set forth in Section 3 of Exhibit 1, the Parties agree to revise such sections and/or table of this Agreement. If such approved revised System design is reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in a separate addendum to the Agreement. For the avoidance of doubt, any costs incurred pursuant to this Section 2 of this Exhibit 5 shall be the sole responsibility of Purchaser, and in addition to Purchaser’s other payment obligations under the Agreement, but shall not be considered Contract Price exclusions subject to Section 5 of Exhibit 1.
5. **Commencement of Installation.** Section 2(d) of Exhibit 3 does not apply to the Premises or Purchaser’s rights under the Agreement and instead the following terms apply: “If Commencement of Installation has not occurred within 60 days after the Installation Readiness Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.”
6. **Roof Completion Notice.** As soon as reasonably practical after all flashings have been installed and the New Roof is substantially complete, Purchaser shall provide Seller and Seller’s Contractor written notice of the same.
7. **Permits and Approvals.** An “Approval” as defined in Section 5.b of Exhibit 3 shall not include any permits, agreements or approvals necessary solely to facilitate the construction of New Roof(s).
8. **Restoration of the Premises.** As used in Section 9 of Exhibit 3, “original condition” shall mean the condition of the Premises as of the date of Commencement of Installation.

Except as set forth in this Exhibit 5, all terms and conditions of the Agreement remain unchanged and shall continue in full force and effect.

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of _____, 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	Burgess Pool		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A to Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

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

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point and Premises
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Performance Guaranty

Purchaser: City of Menlo Park

Seller: Peninsula Clean Energy Authority

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: Shawn Marshall

Title: _____

Title: Chief Executive Officer

Date: _____

Date: _____

Exhibit 1

Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in **Exhibit 2** and has obtained all necessary Approvals (as defined in **Section 5(b)** of **Exhibit 3**), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$ 0.234 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in **Exhibit 2**.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
 - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in **Section 2(c)** of **Exhibit 3**, the Contract Price excludes the following:
 - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
 - b. Tree removal, tree trimming, mowing and any landscape improvements.
 - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - d. Removal of existing lighting, light poles, or concrete light post bases.
 - e. Roof membrane maintenance or reroofing work.
 - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
 - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
 - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Resolution No. XXXX
Termination Payment Schedule:
Page 33 of 113

Contract Year	Termination Payment (\$)
1	\$301,791
2	\$289,810
3	\$277,864
4	\$265,954
5	\$254,081
6	\$242,246
7	\$230,450
8	\$218,696
9	\$206,982
10	\$195,312
11	\$183,687
12	\$172,106
13	\$160,573
14	\$149,089
15	\$137,654
16	\$126,270
17	\$114,939
18	\$103,663
19	\$92,443
20	\$81,281

“**Contract Year**” means the year commencing on the Commercial Operation Date and each subsequent year commencing on the anniversary of the Commercial Operation Date.

Exhibit 2

System Description, Delivery Point and Premises

1. System Location: 501 Laurel St, Menlo Park, CA 94025
2. System Size (DC kW): 54.6 (AC kW): 53.3
3. System Description (Expected Structure, etc.): Rooftop
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location at the Premises;
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
 - e. Construction assumptions (if any).

Schedule A

1. Physical building address: 501 Laurel St, Menlo Park, CA 94025
2. Number of Stories: 1
3. Total Square Footage: 17,250
4. Year Built: 2013
5. Year of any mechanical/electrical updates: 2013
6. Type of Construction, (example; wood frame, masonry, steel): Masonry bearing walls with wood roof deck supported by open-web steel joists and concrete strip footing foundation system
7. Description/ Type of roof structure/system: Gable construction with clay/concrete tiles
8. Confirm whether the building is sprinklered: Yes
9. Describe any additional security measures, (example: video surveillance, etc.): N/A

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.

Exhibit 3

General Terms and Conditions

Exhibit 3 Table of Contents

1. PURCHASE AND SALE OF ELECTRICITY	1
2. TERM AND TERMINATION	1
3. BILLING AND PAYMENT; TAXES	1
4. RECS AND INCENTIVES	2
5. PROJECT COMPLETION	3
6. INSTALLATION, OPERATION AND MAINTENANCE.....	4
7. MISCELLANEOUS RIGHTS AND OBLIGATIONS OF THE PARTIES	5
8. RELOCATION OF SYSTEM	6
9. REMOVAL OF SYSTEM UPON TERMINATION OR EXPIRATION.....	6
10. MEASUREMENT	7
11. DEFAULT, REMEDIES AND DAMAGES	7
12. REPRESENTATIONS AND WARRANTIES	10
13. INSURANCE	11
14. OWNERSHIP; OPTION TO PURCHASE.....	11
15. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.....	12
16. CHANGE IN LAW.....	14
17. ASSIGNMENT AND FINANCING.....	14
18. CONFIDENTIALITY	15
19. GENERAL PROVISIONS.....	16

Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.

3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
 - ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").
- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's City Council for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive,

and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

5. **Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
 - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

c. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller or Purchaser, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that

such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or

repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller's determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

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

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser's site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act ("**OSHA**") requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a

manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.

- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight (“**Insolation**”) is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a “**Lien**”) on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's

structures of any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
 - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
 - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
 - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

- d. **Meter Testing.** Purchaser may require Seller to cause the Meter to be tested once at any time during the Term at Seller's cost (an "**Initial Meter Test**"). After the Initial Meter Test, Purchaser may request that Seller cause the Meter to be tested only upon Purchaser's reasonable basis for belief that a Meter Inaccuracy (as defined below) exists, at Seller's cost (a "**Second Meter Test**"). In the absence of a Meter Inaccuracy as demonstrated by a Second Meter Test, any future Meter testing shall be at Purchaser's sole cost and expense. If any Meter test demonstrates inaccuracy of the Meter of greater than two percent (2%) over the course of a Contract Year (a "**Meter Inaccuracy**"), then Seller shall credit any overpayment by Purchaser against, or add any underpayment by Purchaser to, the next monthly invoice it provides to Purchaser. Purchaser shall have the right to witness any Meter test.

11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is 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 ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further

reasonable period of time, not to exceed ninety (90) days;

- iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
 - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
 - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
 - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this Exhibit 3, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
 - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
 - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior

- written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the “**Seller Termination Payment**”). The Seller Termination Payment determined under this Section 11(b)(iii) cannot be less than zero.
- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
- v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
- vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations 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. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
 - 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 is bound.
 - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
 - 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. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.
- c. **Seller's Warranties.**
- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
 - ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING

OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN **EXHIBIT 4** REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. Insurance.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
 - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in **Section 13(a)** shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is 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.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. Ownership; Option to Purchase.

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
 - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
 - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
 - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form

mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

- v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

- i. **Early Purchase Option.** Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the "**Early Purchase Option Period**"), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of **Exhibit 1**. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. **Exercise of Option.** 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 System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System ("**End of Term Option to Purchase**"). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. **Title Transfer; Warranties; Manuals.** If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers' warranties shall transfer to Purchaser upon System Owner's receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold "as is, where is, with all faults." Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).

b. **Permission to Operate Indemnification.** Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser's breach of Purchaser's obligations under Section 5e.

c. **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 may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

d. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**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.

e. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- g. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any liability.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

17. **Assignment and Financing.**

- a. **Assignment.**
 - i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
 - ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
 - iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or

System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

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

18. Confidentiality.

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

- b. **Permitted Disclosures.** Notwithstanding Section 18(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
- iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov't Code Sections 6254 and 6255.
- iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
- v. Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably

injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of Exhibit 1, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this Exhibit 3 shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the

other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9.

- h. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of **Exhibit 3**

Exhibit 4
Performance Guaranty

In consideration for Purchaser’s entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority (“**Seller**”) and the Purchaser related to the System at the Premises (the “**PPA**”), this Performance Guaranty (this “**Guaranty**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Guarantor below (the “**Effective Date**”).

Purchaser:		Guarantor:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Project Name	Burgess Pool		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst (“**Estimated Production (Annual kWh)**”) as set forth in **Table 1.A** below (such guaranteed generation, the “**Guaranteed Production (Annual kWh)**” set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.

A. Guarantor will use local weather data to adjust the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) at a Typical Meteorological Year (TMY) weather station reasonably close to the facility; (ii) satellite data provided by a third-party vendor of Seller; or (iii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

Table 1.A, projected production values as measured at a TMY weather station reasonably close to the facility:

Contract Year	Estimated Production (Annual kWh)	Guaranteed Production (Annual kWh)
Year 1	84,134	79,927
Year 2	83,713	79,528
Year 3	83,295	79,130
Year 4	82,878	78,734
Year 5	82,464	78,341
Year 6	82,052	77,949
Year 7	81,641	77,559
Year 8	81,233	77,171
Year 9	80,827	76,786
Year 10	80,423	76,402
Year 11	80,021	76,020
Year 12	79,621	75,640
Year 13	79,222	75,261
Year 14	78,826	74,885
Year 15	78,432	74,511

Resolution No. XXXX Year 16	78,040	74,138
Page 57 of 113 Year 17	77,650	73,767
Year 18	77,262	73,399
Year 19	76,875	73,032
Year 20	76,491	72,666

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

Guarantor:

Signature:

Printed Name: Shawn Marshall

Title: Chief Executive Officer

Date:

Purchaser:

Signature:

Printed Name:

Title:

Date:

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of _____, 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	City Hall		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A to Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

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

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point and Premises
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Performance Guaranty
- Exhibit 5** New Roof Terms and Conditions

Purchaser: City of Menlo Park

Seller: Peninsula Clean Energy Authority

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: Shawn Marshall
Title: Chief Executive Officer
Date: _____

Exhibit 1

Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in **Exhibit 2** and has obtained all necessary Approvals (as defined in **Section 5(b)** of **Exhibit 3**), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$ 0.261 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in **Exhibit 2**.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
 - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in **Section 2(c)** of **Exhibit 3**, the Contract Price excludes the following:
 - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
 - b. Tree removal, tree trimming, mowing and any landscape improvements.
 - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - d. Removal of existing lighting, light poles, or concrete light post bases.
 - e. Roof membrane maintenance or reroofing work.
 - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
 - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
 - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Resolution No. XXXX
 Termination Payment Schedule:
 Page 60 of 113

Contract Year	Termination Payment (\$)
1	\$2,095,763
2	\$1,999,290
3	\$1,902,911
4	\$1,806,628
5	\$1,710,444
6	\$1,614,362
7	\$1,518,386
8	\$1,422,518
9	\$1,326,762
10	\$1,231,121
11	\$1,135,598
12	\$1,040,198
13	\$944,923
14	\$849,778
15	\$754,766
16	\$659,891
17	\$565,158
18	\$470,570
19	\$376,133
20	\$281,851

“**Contract Year**” means the year commencing on the Commercial Operation Date and each subsequent year commencing on the anniversary of the Commercial Operation Date.

Exhibit 2

System Description, Delivery Point and Premises

1. System Location: 701 Laurel St, Menlo Park, CA 94025
2. System Size (DC kW): 379.7 (AC kW): 340.0
3. System Description (Expected Structure, etc.): Carport and Rooftop
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location at the Premises;
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
 - e. Construction assumptions (if any).

Schedule A

1. Physical building address: 701 Laurel St, Menlo Park, CA 94025
2. Number of Stories: 2
3. Total Square Footage: 59,789
4. Year Built: Built 1960 renovated 1998, 2015, 2016
5. Year of any mechanical/electrical updates: 1998
6. Type of Construction, (example; wood frame, masonry, steel): Masonry bearing walls with wood roof deck supported by wood joists and concrete strip footing foundation system
7. Description/ Type of roof structure/system: Shingle roof
8. Confirm whether the building is sprinklered: Yes
9. Describe any additional security measures, (example: video surveillance, etc.): Access badges for city hall, surveillance in police area

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.

Exhibit 3

General Terms and Conditions

Exhibit 3 Table of Contents

1. PURCHASE AND SALE OF ELECTRICITY	1
2. TERM AND TERMINATION	1
3. BILLING AND PAYMENT; TAXES	1
4. RECS AND INCENTIVES	2
5. PROJECT COMPLETION	3
6. INSTALLATION, OPERATION AND MAINTENANCE.....	4
7. MISCELLANEOUS RIGHTS AND OBLIGATIONS OF THE PARTIES	5
8. RELOCATION OF SYSTEM	6
9. REMOVAL OF SYSTEM UPON TERMINATION OR EXPIRATION.....	6
10. MEASUREMENT	7
11. DEFAULT, REMEDIES AND DAMAGES	7
12. REPRESENTATIONS AND WARRANTIES	10
13. INSURANCE	11
14. OWNERSHIP; OPTION TO PURCHASE.....	11
15. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.....	12
16. CHANGE IN LAW.....	14
17. ASSIGNMENT AND FINANCING.....	14
18. CONFIDENTIALITY	15
19. GENERAL PROVISIONS.....	16

Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.

3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
 - ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").
- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's City Council for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive,

and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

5. **Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
 - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

c. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller or Purchaser, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that

such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or

repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller's determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

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

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser's site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act ("**OSHA**") requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a

manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.

- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's

structures of any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
 - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
 - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
 - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

- d. **Meter Testing.** Purchaser may require Seller to cause the Meter to be tested once at any time during the Term at Seller's cost (an "**Initial Meter Test**"). After the Initial Meter Test, Purchaser may request that Seller cause the Meter to be tested only upon Purchaser's reasonable basis for belief that a Meter Inaccuracy (as defined below) exists, at Seller's cost (a "**Second Meter Test**"). In the absence of a Meter Inaccuracy as demonstrated by a Second Meter Test, any future Meter testing shall be at Purchaser's sole cost and expense. If any Meter test demonstrates inaccuracy of the Meter of greater than two percent (2%) over the course of a Contract Year (a "**Meter Inaccuracy**"), then Seller shall credit any overpayment by Purchaser against, or add any underpayment by Purchaser to, the next monthly invoice it provides to Purchaser. Purchaser shall have the right to witness any Meter test.

11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is 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 ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further

reasonable period of time, not to exceed ninety (90) days;

- iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
 - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
 - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
 - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this Exhibit 3, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
 - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
 - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior

- written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the “**Seller Termination Payment**”). The Seller Termination Payment determined under this Section 11(b)(iii) cannot be less than zero.
- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
- v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
- vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations 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. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
 - 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 is bound.
 - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
 - 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. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.
- c. **Seller's Warranties.**
- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
 - ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING

OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN **EXHIBIT 4** REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. Insurance.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
 - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in **Section 13(a)** shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is 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.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. Ownership; Option to Purchase.

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
 - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
 - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
 - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form

mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

- v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

- i. **Early Purchase Option.** Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the "**Early Purchase Option Period**"), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of **Exhibit 1**. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. **Exercise of Option.** 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 System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System ("**End of Term Option to Purchase**"). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. **Title Transfer; Warranties; Manuals.** If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers' warranties shall transfer to Purchaser upon System Owner's receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold "as is, where is, with all faults." Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).

b. **Permission to Operate Indemnification.** Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser's breach of Purchaser's obligations under Section 5e.

c. **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 may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

d. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**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.

e. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- g. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any liability.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

17. **Assignment and Financing.**

- a. **Assignment.**
 - i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
 - ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
 - iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or

System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

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

18. Confidentiality.

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

- b. **Permitted Disclosures.** Notwithstanding Section 18(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
- iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov't Code Sections 6254 and 6255.
- iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
- v. Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably

injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of Exhibit 1, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this Exhibit 3 shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the

other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9.

- h. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of **Exhibit 3**

Exhibit 4
Performance Guaranty

In consideration for Purchaser’s entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority (“**Seller**”) and the Purchaser related to the System at the Premises (the “**PPA**”), this Performance Guaranty (this “**Guaranty**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Guarantor below (the “**Effective Date**”).

Purchaser:		Guarantor:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Project Name	City Hall		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst (“**Estimated Production (Annual kWh)**”) as set forth in **Table 1.A** below (such guaranteed generation, the “**Guaranteed Production (Annual kWh)**” set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.

A. Guarantor will use local weather data to adjust the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) at a Typical Meteorological Year (TMY) weather station reasonably close to the facility; (ii) satellite data provided by a third-party vendor of Seller; or (iii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

Table 1.A, projected production values as measured at a TMY weather station reasonably close to the facility:

Contract Year	Estimated Production (Annual kWh)	Guaranteed Production (Annual kWh)
Year 1	559,222	531,261
Year 2	556,426	528,605
Year 3	553,644	525,962
Year 4	550,876	523,332
Year 5	548,121	520,715
Year 6	545,381	518,112
Year 7	542,654	515,521
Year 8	539,941	512,944
Year 9	537,241	510,379
Year 10	534,555	507,827
Year 11	531,882	505,288
Year 12	529,222	502,761
Year 13	526,576	500,248
Year 14	523,943	497,746
Year 15	521,324	495,258

Resolution No. XXXX Year 16	518,717	492,781
Page 84 of 113 Year 17	516,124	490,317
Year 18	513,543	487,866
Year 19	510,975	485,426
Year 20	508,420	482,999

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

Guarantor:

Signature:

Printed Name: Shawn Marshall

Title: Chief Executive Officer

Date:

Purchaser:

Signature:

Printed Name:

Title:

Date:

Exhibit 5

Terms and Conditions New Roof Project Sites

1. **Defined Terms.** Terms capitalized but not defined herein shall have the meaning set forth in the Agreement.
2. **New Roof.** The Parties hereby agree and acknowledge that Purchaser plans to repair or replace the roof of City Hall prior to Commencement of Installation of the System and that, as of the Effective Date, such roof is not ready for System installation (each such roof, a "New Roof").
3. **Seller's Contractor.** As soon as reasonably practical after the Effective Date, Seller shall provide Purchaser with notice information for any contractor engaged by Seller in accordance with the Agreement ("Seller's Contractor").
4. **Installation Readiness Date; Redesign.** As used herein, "Installation Readiness Date" means the date on which a New Roof is ready for attachment install and such New Roof is ready, available and accessible for Seller's Contractor to commence installation of the System. As soon as reasonably practical after Purchaser determines that the Installation Readiness Date is achieved, Purchaser shall provide Seller and Seller's Contractor written notice of the same. The Parties hereby acknowledge and agree that if the Installation Readiness Date is not achieved by November 2, 2025 (the "New Roof Installation Readiness Deadline"), then the System is unlikely to remain eligible to qualify for the Utility's net metering 2.0 ("NEM2") tariff and the anticipated value of the System's electricity output may differ from such anticipated value if the System were to remain eligible to qualify for NEM2. Therefore, the Parties agree that if the Installation Readiness Date is not achieved by the New Roof Installation Readiness Deadline, then Purchaser may, within twenty (20) days after the New Roof Installation Readiness Deadline, request that Seller revise the System design in accordance with Purchaser's reasonable requests, at Purchaser's sole cost and expense. Seller shall deliver to Purchaser such revised System design, including any resulting changes to Section 6 of Exhibit 1, changes to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or increases to the Contract Price, within thirty (30) days after Purchaser's request, during which thirty (30) day period the Parties shall cooperate in good faith on such revised System design. Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised System design and any such resulting changes in writing. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, such disapproval shall be deemed Purchaser's decision to use the original System design. If Purchaser approves a revised System design in accordance with this Section 2 of Exhibit 5 and such revised design will result in a change to Section 6 of Exhibit 1, a change to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or an increase to the Contract Price as set forth in Section 3 of Exhibit 1, the Parties agree to revise such sections and/or table of this Agreement. If such approved revised System design is reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in a separate addendum to the Agreement. For the avoidance of doubt, any costs incurred pursuant to this Section 2 of this Exhibit 5 shall be the sole responsibility of Purchaser, and in addition to Purchaser's other payment obligations under the Agreement, but shall not be considered Contract Price exclusions subject to Section 5 of Exhibit 1.
5. **Commencement of Installation.** Section 2(d) of Exhibit 3 does not apply to the Premises or Purchaser's rights under the Agreement and instead the following terms apply: "If Commencement of Installation has not occurred within 60 days after the Installation Readiness Date, Purchaser may terminate this Agreement by providing thirty (30) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser's only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination."
6. **Roof Completion Notice.** As soon as reasonably practical after all flashings have been installed and the New Roof is substantially complete, Purchaser shall provide Seller and Seller's Contractor written notice of the same.
7. **Permits and Approvals.** An "Approval" as defined in Section 5.b of Exhibit 3 shall not include any permits, agreements or approvals necessary solely to facilitate the construction of New Roof(s).
8. **Restoration of the Premises.** As used in Section 9 of Exhibit 3, "original condition" shall mean the condition of the Premises as of the date of Commencement of Installation.

Except as set forth in this Exhibit 5, all terms and conditions of the Agreement remain unchanged and shall continue in full force and effect.

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of _____, 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	Menlo Park Library		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A to Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

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

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point and Premises
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Performance Guaranty
- Exhibit 5** New Roof Terms and Conditions

Purchaser: City of Menlo Park

Seller: Peninsula Clean Energy Authority

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: Shawn Marshall
Title: Chief Executive Officer
Date: _____

Exhibit 1

Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in **Exhibit 2** and has obtained all necessary Approvals (as defined in **Section 5(b)** of **Exhibit 3**), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$0.234 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in **Exhibit 2**.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
 - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in **Section 2(c)** of **Exhibit 3**, the Contract Price excludes the following:
 - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
 - b. Tree removal, tree trimming, mowing and any landscape improvements.
 - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
 - d. Removal of existing lighting, light poles, or concrete light post bases.
 - e. Roof membrane maintenance or reroofing work.
 - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
 - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
 - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Resolution No. XXXX
Termination Payment Schedule:
Page 88 of 113

Contract Year	Termination Payment (\$)
1	\$1,180,270
2	\$1,127,161
3	\$1,074,120
4	\$1,021,146
5	\$968,243
6	\$915,413
7	\$862,658
8	\$809,979
9	\$757,380
10	\$704,863
11	\$652,429
12	\$600,083
13	\$547,825
14	\$495,660
15	\$443,589
16	\$391,616
17	\$339,744
18	\$287,975
19	\$236,312
20	\$184,759

“**Contract Year**” means the year commencing on the Commercial Operation Date and each subsequent year commencing on the anniversary of the Commercial Operation Date.

Exhibit 2

System Description, Delivery Point and Premises

1. System Location: 800 Alma St, Menlo Park, CA 94025
2. System Size (DC kW): 229.9 (AC kW): 200.0
3. System Description (Expected Structure, etc.): Rooftop
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location at the Premises;
 - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
 - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
 - e. Construction assumptions (if any).

Schedule A

1. Physical building address: 800 Alma St, Menlo Park, CA 94025
2. Number of Stories: 2 (main and basement level)
3. Total Square Footage: 33,470
4. Year Built: 1957
5. Year of any mechanical/electrical updates: 1970, 1991, 2012
6. Type of Construction, (example; wood frame, masonry, steel): Masonry bearing walls with wood roof deck supported by wood joists and concrete strip footing foundation system
7. Description/ Type of roof structure/system: Clay / Concrete Tile
8. Confirm whether the building is sprinklered: Yes
9. Describe any additional security measures, (example: video surveillance, etc.): N/A

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.

Exhibit 3

General Terms and Conditions

Exhibit 3 Table of Contents

1. PURCHASE AND SALE OF ELECTRICITY	1
2. TERM AND TERMINATION	1
3. BILLING AND PAYMENT; TAXES	1
4. RECS AND INCENTIVES	2
5. PROJECT COMPLETION	3
6. INSTALLATION, OPERATION AND MAINTENANCE.....	4
7. MISCELLANEOUS RIGHTS AND OBLIGATIONS OF THE PARTIES	5
8. RELOCATION OF SYSTEM	6
9. REMOVAL OF SYSTEM UPON TERMINATION OR EXPIRATION.....	6
10. MEASUREMENT	7
11. DEFAULT, REMEDIES AND DAMAGES	7
12. REPRESENTATIONS AND WARRANTIES	10
13. INSURANCE	11
14. OWNERSHIP; OPTION TO PURCHASE.....	11
15. INDEMNIFICATION AND LIMITATIONS OF LIABILITY.....	12
16. CHANGE IN LAW.....	14
17. ASSIGNMENT AND FINANCING.....	14
18. CONFIDENTIALITY	15
19. GENERAL PROVISIONS.....	16

Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.

3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
 - ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").
- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's City Council for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive,

and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

5. **Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
 - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
 - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

c. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller or Purchaser, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that

such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "Outage" and the forty-eight (48) hour period the "Outage Allowance"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or

repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller's determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser's cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

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

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller's agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the "**Exclusive License**", and together with the Non-Exclusive License, the "**Licenses**") for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser's site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Purchaser's control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act ("**OSHA**") requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a

manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.

- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's

structures of any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
 - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
 - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
 - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

- d. **Meter Testing.** Purchaser may require Seller to cause the Meter to be tested once at any time during the Term at Seller's cost (an "**Initial Meter Test**"). After the Initial Meter Test, Purchaser may request that Seller cause the Meter to be tested only upon Purchaser's reasonable basis for belief that a Meter Inaccuracy (as defined below) exists, at Seller's cost (a "**Second Meter Test**"). In the absence of a Meter Inaccuracy as demonstrated by a Second Meter Test, any future Meter testing shall be at Purchaser's sole cost and expense. If any Meter test demonstrates inaccuracy of the Meter of greater than two percent (2%) over the course of a Contract Year (a "**Meter Inaccuracy**"), then Seller shall credit any overpayment by Purchaser against, or add any underpayment by Purchaser to, the next monthly invoice it provides to Purchaser. Purchaser shall have the right to witness any Meter test.

11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is 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 ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further

reasonable period of time, not to exceed ninety (90) days;

- iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
 - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
 - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
 - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this Exhibit 3, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
 - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
 - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior

written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the “**Seller Termination Payment**”). The Seller Termination Payment determined under this Section 11(b)(iii) cannot be less than zero.

- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
- v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
- vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. Representations and Warranties.

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations 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. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
 - 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 is bound.
 - iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
 - 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. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.
- c. **Seller's Warranties.**
- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
 - ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING

OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN **EXHIBIT 4** REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

13. Insurance.

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
 - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in **Section 13(a)** shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is 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.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. Ownership; Option to Purchase.

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
 - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
 - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
 - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form

mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

- v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

- i. **Early Purchase Option.** Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the "**Early Purchase Option Period**"), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of **Exhibit 1**. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. **Exercise of Option.** 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 System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System ("**End of Term Option to Purchase**"). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. **Title Transfer; Warranties; Manuals.** If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers' warranties shall transfer to Purchaser upon System Owner's receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold "as is, where is, with all faults." Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).

b. **Permission to Operate Indemnification.** Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser's breach of Purchaser's obligations under Section 5e.

c. **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 may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

d. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**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.

e. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

- f. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- g. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any liability.

16. **Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

17. **Assignment and Financing.**

- a. **Assignment.**
 - i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
 - ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
 - iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or

System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

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

18. Confidentiality.

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

- b. **Permitted Disclosures.** Notwithstanding Section 18(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
- iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov't Code Sections 6254 and 6255.
- iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
- v. Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably

injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of Exhibit 1, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this Exhibit 3 shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the

other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9.

- h. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of **Exhibit 3**

Exhibit 4
Performance Guaranty

In consideration for Purchaser’s entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority (“**Seller**”) and the Purchaser related to the System at the Premises (the “**PPA**”), this Performance Guaranty (this “**Guaranty**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Guarantor below (the “**Effective Date**”).

Purchaser:		Guarantor:	
Name and Address	City of Menlo Park 701 Laurel St. Menlo Park, CA 94025 Attention: _____ _____	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone		Phone	(650) 260-0087
E-mail		E-mail	rreyes@peninsulacleanenergy.com
Project Name	Menlo Park Library		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst (“**Estimated Production (Annual kWh)**”) as set forth in **Table 1.A** below (such guaranteed generation, the “**Guaranteed Production (Annual kWh)**” set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.

A. Guarantor will use local weather data to adjust the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) at a Typical Meteorological Year (TMY) weather station reasonably close to the facility; (ii) satellite data provided by a third-party vendor of Seller; or (iii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

Table 1.A, projected production values as measured at a TMY weather station reasonably close to the facility:

Contract Year	Estimated Production (Annual kWh)	Guaranteed Production (Annual kWh)
Year 1	355,074	337,320
Year 2	353,299	335,634
Year 3	351,532	333,956
Year 4	349,774	332,286
Year 5	348,026	330,624
Year 6	346,285	328,971
Year 7	344,554	327,326
Year 8	342,831	325,690
Year 9	341,117	324,061
Year 10	339,412	322,441
Year 11	337,714	320,829
Year 12	336,026	319,225
Year 13	334,346	317,628
Year 14	332,674	316,040
Year 15	331,011	314,460

Resolution No. XXXX Year 16	329,356	312,888
Page 112 of 113 Year 17	327,709	311,323
Year 18	326,070	309,767
Year 19	324,440	308,218
Year 20	322,818	306,677

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

Guarantor:

Signature:

Printed Name: Shawn Marshall

Title: Chief Executive Officer

Date:

Purchaser:

Signature:

Printed Name:

Title:

Date:

Exhibit 5
Terms and Conditions
New Roof Project Sites

1. **Defined Terms.** Terms capitalized but not defined herein shall have the meaning set forth in the Agreement.
2. **New Roof.** The Parties hereby agree and acknowledge that Purchaser plans to repair or replace the roof of the Menlo Park Library prior to Commencement of Installation of the System and that, as of the Effective Date, such roof is not ready for System installation (each such roof, a “New Roof”).
3. **Seller’s Contractor.** As soon as reasonably practical after the Effective Date, Seller shall provide Purchaser with notice information for any contractor engaged by Seller in accordance with the Agreement (“Seller’s Contractor”).
4. **Installation Readiness Date; Redesign.** As used herein, “Installation Readiness Date” means the date on which a New Roof is ready for attachment install and such New Roof is ready, available and accessible for Seller’s Contractor to commence installation of the System. As soon as reasonably practical after Purchaser determines that the Installation Readiness Date is achieved, Purchaser shall provide Seller and Seller’s Contractor written notice of the same. The Parties hereby acknowledge and agree that if the Installation Readiness Date is not achieved by January 1, 2026 (the “New Roof Installation Readiness Deadline”), then the System is unlikely to remain eligible to qualify for the Utility’s net metering 2.0 (“NEM2”) tariff and the anticipated value of the System’s electricity output may differ from such anticipated value if the System were to remain eligible to qualify for NEM2. Therefore, the Parties agree that if the Installation Readiness Date is not achieved by the New Roof Installation Readiness Deadline, then Purchaser may, within twenty (20) days after the New Roof Installation Readiness Deadline, request that Seller revise the System design in accordance with Purchaser’s reasonable requests, at Purchaser’s sole cost and expense. Seller shall deliver to Purchaser such revised System design, including any resulting changes to Section 6 of Exhibit 1, changes to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or increases to the Contract Price, within thirty (30) days after Purchaser’s request, during which thirty (30) day period the Parties shall cooperate in good faith on such revised System design. Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised System design and any such resulting changes in writing. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, such disapproval shall be deemed Purchaser’s decision to use the original System design. If Purchaser approves a revised System design in accordance with this Section 2 of Exhibit 5 and such revised design will result in a change to Section 6 of Exhibit 1, a change to any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, or an increase to the Contract Price as set forth in Section 3 of Exhibit 1, the Parties agree to revise such sections and/or table of this Agreement. If such approved revised System design is reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in a separate addendum to the Agreement. For the avoidance of doubt, any costs incurred pursuant to this Section 2 of this Exhibit 5 shall be the sole responsibility of Purchaser, and in addition to Purchaser’s other payment obligations under the Agreement, but shall not be considered Contract Price exclusions subject to Section 5 of Exhibit 1.
5. **Commencement of Installation.** Section 2(d) of Exhibit 3 does not apply to the Premises or Purchaser’s rights under the Agreement and instead the following terms apply: “If Commencement of Installation has not occurred within 60 days after the Installation Readiness Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.”
6. **Roof Completion Notice.** As soon as reasonably practical after all flashings have been installed and the New Roof is substantially complete, Purchaser shall provide Seller and Seller’s Contractor written notice of the same.
7. **Permits and Approvals.** An “Approval” as defined in Section 5.b of Exhibit 3 shall not include any permits, agreements or approvals necessary solely to facilitate the construction of New Roof(s).
8. **Restoration of the Premises.** As used in Section 9 of Exhibit 3, “original condition” shall mean the condition of the Premises as of the date of Commencement of Installation.

Except as set forth in this Exhibit 5, all terms and conditions of the Agreement remain unchanged and shall continue in full force and effect.

