

**Power & Water Resources Pooling Authority
Resolution 23-08-12**

BCID SOLAR POWER PROJECT

WHEREAS, the Power and Water Resources Pooling Authority ("PWRPA") was created by a Joint Powers Agreement ("JPA") to, among other things, study, promote, develop, conduct, finance, acquire, construct, and/or operate water and energy-related projects and programs; and

WHEREAS, PWRPA is authorized to make and enter into contracts with entities in order to study, promote, develop, conduct, design, finance, acquire, construct, and operate water and energy-related projects and programs; and

WHEREAS, PWRPA and its Project Participants have signed the Aggregation Services Agreement ("ASA") under which the Pooling Authority provides aggregated electric services to electric accounts designated by the Project Participants; and

WHEREAS, Section 7.3 of the JPA and Section 4.6 of the ASA provide that PWRPA or some or all of the Project Participants may develop, install, own and operate certain electric generating facilities for the benefit of certain or all Project Participants; and

WHEREAS, Section 7.1 of the JPA and Section 4.6 of the ASA provide, among other things, that funding for, participation and withdrawal of participation in any Project undertaken by PWRPA, and the purchase and integration of electricity from these electric generating facilities, including any credit to be given to the host Project Participant or participating Project Participants, shall be governed by a separate Project Agreement; and

WHEREAS, Article 5 of the ASA provides that the Board of Directors ("Board") shall, among other things, review and approve contracts related to the provision of electric service under the ASA, review and approve a budget relating to the provision of electric services under the ASA, and allocate approved costs through rates and charges applicable to Project Participants; and

WHEREAS, pursuant to Resolution 13-11-13, PWRPA adopted a Renewable Energy Resources Procurement Plan in compliance with the California Energy Commission's Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities; and

WHEREAS, pursuant to Public Utilities Code Section § 399.16(b)-(c), electricity products are classified as Portfolio Content Category 1 if they are: (a) associated with contracts or ownership agreements that are executed after June 1, 2010; (b) procured as bundled; and (c) are associated with an eligible renewable energy resource that has its first point of interconnection to a distribution system used to serve end users within a California Balancing Authority; and

WHEREAS, the proposed solar PV system at Banta Carbona Irrigation District ("BCID") shall be interconnected directly to the grid controlled by the California Independent System Operator ("CAISO") and designed to export energy to the CAISO; and

WHEREAS, the BCID Solar Project will be constructed, owned and operated by BCID, LLC, and PWRPA will execute a power purchase agreement ("PPA") for the BCID Solar Project; and

WHEREAS, prior to the start of construction activities, BCID shall execute a Solar Power License Agreement By and Between BCID Solar, LLC and BCID ("Site License"); and

WHEREAS, as required by the Aggregation Services Agreement ("ASA"), a Project Rate Agreement was prepared between PWRPA and BCID as the sole Participating Customer, which among other things, specifies the rates, terms and conditions for costs and energy associated with the Projects; and

WHEREAS, BCID shall provide documentation reasonably satisfactory to PWRPA showing that installation, operation, and maintenance of the BCID Project has been determined to be exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") in reliance on, but not limited to, California Public Resources Code section 21080.35 (statutory exemption for solar system installation) and section 15301 (categorical exemption for future maintenance and operation of an existing facility); and

WHEREAS, the Rate Agreement shall be effective on the first day when all of the following shall have occurred: (a) the Rate Agreement has been executed and delivered by BCID to PWRPA; (b) BCID Solar, LLC has executed the PPA; (c) PWRPA has executed (i) the PPA, and delivered it to BCID Solar, LLC and (ii) the Rate Agreement, and delivered it to BCID; and (d) BCID has executed the Site License; and

WHEREAS, BCID desires that the BCID Solar Project be designated as a PWRPA Project with BCID as the host Project Participant.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board hereby:

1. Finds that it is reasonable and consistent with the purpose and objective of the JPA and ASA to designate the BCID Solar Project as a Pooling Authority "Project" as that term is defined in JPA Section 1.12. (Attachment A)
2. Finds that it is reasonable and consistent with the purpose and objective of the JPA and ASA to designate BCID as the sole "Project Participant" as that term is defined in JPA Section 1.14 ("RPS Project Participant").
3. Approves the form of the Rate Agreement, subject to non-substantive changes made to it by General Counsel. (Attachment B).

4. Approves the form of the PPA, subject to non-substantive changes made to it by the General Counsel. (Attachment C).
5. Authorizes and directs the General Counsel to make any final, non-substantive changes that he believes are necessary to the Rate Agreement and PPA, and to distribute them to BCID and BCID Solar, LLC, respectively.
6. Authorizes and directs the Chairman, or designee, to execute the Rate Agreement Rate Agreement and the PPA.
7. Authorizes and directs authorized representatives of PWRPA to do and perform any and all acts required under the Rate Agreement and PPA in order to fulfill PWRPA's obligations described therein.
8. Authorizes this Resolution to take effect immediately upon its adoption.

PASSED AND ADOPTED by the Pooling Authority Board of Directors this 2nd day of August, 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo Water District, Glenn-Colusa ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, (87.4% Voting Shares)
NOES	
ABSENT	James ID, Lower Tule River ID, Princeton/Provident ID (12.6% Voting Shares)



David Weisenberger
Chairman



Attest by: Bruce McLaughlin
Secretary

**Power & Water Resources Pooling Authority
Resolution 23-08-12**

Attachment A for Resolution 23-08-12
Project Description

BCID Solar, LLC will permit, construct, commission, own, and operate a solar power resource on land owned by the Banta Carbona Irrigation District located in San Joaquin County, with general attributes as follows:

1. Size – 3,600 kW AC.
2. Commercial Operation Date (“COD”) – during late Q1 2025.
3. Interconnection – the project will interconnect directly to the PWRPA electric system and the CAISO-operated grid.
4. Output – Preliminary estimates indicate an average annual output of 9,250,000 kWh over the 35-year term.
5. PWRPA will enter into a Power Purchase Agreement (“PPA”) to buy all the electrical energy, capacity and renewable energy credits/environmental attributes from the Project for a 35-year period.

**Power & Water Resources Pooling Authority
Resolution 23-08-12**

Attachment B for Resolution 23-08-12

Form of Rate Agreement

**SEPARATELY METERED DISTRIBUTED GENERATION RATE
AGREEMENT
– BCID SOLAR PROJECT –**

This **Separately Metered Distributed Generation Rate Agreement – BCID Solar Project** (“SMDG Rate Agreement”), effective as of date described in Section 2.1, is made and entered into by and between the **Power and Water Resources Pooling Authority** (“PWRPA”) and the Banta Carbona Irrigation District (“BCID”). BCID is a Project Participant and by executing this SMDG Rate Agreement becomes a Participating Customer,” thereby affirmatively electing to pay rates reflecting costs, energy, and environmental attributes associated with PWRPA’s generation entitlement share in the SMDG Solar Project.

RECITALS

1. PWRPA operates as a publicly owned electric utility and provides retail electric service to BCID and other Project Participants pursuant to the Aggregation Services Agreement (“ASA”) and rates, terms and conditions adopted by PWRPA’s Board of Directors, which administers the ASA and serves as the Local Regulatory Authority (“LRA”) for PWRPA.
2. As generally described in Section 4.6 and Article 7 of the PWRPA Joint Powers Agreement (“JPA”), and Section 4.6 of the ASA, Project Participants may elect to pay rates reflecting energy and costs associated with specific electric resource projects developed by PWRPA.
3. Separately Metered Distributed Generation (“SMDG”) projects are eligible renewable electricity resources that are co-located with the retail load of a Participating Customer to be served in a manner that, as compared to centralized electricity generation resources, reduces environmental impacts related to siting, reduces greenhouse gas emissions, reduces distribution losses, reduces certain distribution and/or transmission charges, and adds to local electric reliability.
4. In accordance with PWRPA Renewable Energy Resources Procurement Plan (“PWRPA RPS Plan”) section 6.B, SMDG is classified as a Portfolio Content Category 1 resource since the electricity products are procured as bundled from an eligible renewable energy resource that has its first point of interconnection to a distribution system used to serve end users within a California balancing authority.
5. PWRPA is participating in the development of one SMDG Solar Project on a parcel of land located in San Joaquin County (“BCID SMDG”), nominally rated at 3,600 kilowatts –alternating current (“kWAC”). The land and pumping facilities are owned by BCID. The SMDG facilities will be owned and operated by BCID Solar, LLC (“Seller”).
6. PWRPA will execute a power purchase agreement (“SMDG PPA”) with the Seller relating to the sale and purchase of the full electrical output and associated environmental attributes from the BCID SMDG facilities (“SMDG Project”).

7. Appendix 1 to Exhibit E of the ASA (“PWRPA Allocation Policy”) describes, among other things, how costs and energy from specific resources will be allocated to those Project Participants that have elected to pay rates reflecting such costs and energy (“Participating Customers”). BCID is the sole Participating Customer for the SMDG Projects.
8. PWRPA and BCID desire to enter into this SMDG Rate Agreement in order to specify the rates, terms and conditions associated with energy generated by the SMDG Projects. PWRPA and the Seller have agreed to the form of the SMDG PPA, subject to non- substantial changes as approved by their respective counsel. PWRPA intends to execute the SMDG PPA following the Seller’s approval and execution of the SMDG PPA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, PWRPA and the Participating Customer agree as follows:

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 Definitions:** Capitalized terms used in this SMDG Rate Agreement without other definition herein shall have the respective meanings given to such terms in the ASA or the SMDG PPA, as so designated herein.
- 1.2 ASA Incorporated:** This SMDG Rate Agreement consists of this document, as it may be amended from time to time pursuant to Section 1.4, and the ASA, as it may be amended from time to time pursuant to Section 2.5 of the ASA. The ASA is hereby incorporated into and made a part of this SMDG Rate Agreement.
- 1.3 SMDG PPA:** As described further in Section 3.3, the SMDG PPA shall not be incorporated into and made a part of this SMDG Rate Agreement. However, in light of the importance of the SMDG PPA in regard to the administration of this SMDG Rate Agreement, the SMDG PPA is attached hereto as Attachment 1 for reference purposes. PWRPA has provided BCID a copy of the final, effective SMDG PPA.
- 1.4 Amendments:** This SMDG Rate Agreement may be amended only by written instrument executed by PWRPA and BCID. PWRPA shall provide notice to BCID of the amendment of this SMDG Rate Agreement.
- 1.5 Conflicting Provisions:** As described further in Section 3.1, this SMDG Rate Agreement is intended to implement various provisions in the ASA, including specifically Section 4.5 of the ASA and the PWRPA Allocation Policy, relating to so-called “Specific Projects.” As such, notwithstanding Section 2.4 of the ASA, in the event of any conflict between this document and the ASA, this document shall control.

**ARTICLE 2
EFFECTIVE DATE AND
PARTICIPATION**

- 2.1 Effective Date:** This SMDG Rate Agreement shall be effective on the first day when all of the following shall have occurred: (a) this SMDG Rate Agreement shall have been executed and delivered by the Participating Customer to PWRPA, (b) Seller shall have executed the SMDG PPA, (c) PWRPA shall have executed (i) the SMDG PPA, and delivered it to Seller and (ii) this SMDG Rate Agreement, and delivered it to BCID (“Effective Date”) and (d) BCID shall have executed the Solar Power License Agreement By and Between BCID Solar, LLC and the Banta Carbona Irrigation District (“Site License”). PWRPA shall provide written notice to BCID of the establishment of the Effective Date; provided, however, the failure to provide such notice shall not affect the establishment of the Effective Date.
- 2.2 SMDG Rate Percentages:**
- 2.2.1 General:** BCID is the sole Participating Customer in the SMDG Projects. As such, BCID shall receive all energy, Environmental Attributes Value and costs under this SMDG Rate Agreement.
- 2.2.2 Specified SMDG Rate Percentage:** BCID is the sole Participating Customer for the SMDG Projects, and hereby affirms that its participation level in the SMDG Projects is 100% (“SMDG Rate Percentage”)
- 2.2.3 PWRPA’s Generation Entitlement Share:** PWRPA’s Generation Entitlement Share is 100% of the SMDG Projects.

**ARTICLE 3
SCOPE AND RELATIONSHIP**

- 3.1 General:** PWRPA operates as a publicly owned electric utility and provides full requirements retail electric service to the Project Participants. The ASA and the various rates, policies and programs adopted by the Board define the process by which PWRPA obtains power resources and allocates costs through rates to the Project Participants. Under the JPA and ASA, PWRPA has the authority to offer and implement a flexible power procurement program in which, among other things, PWRPA acquires or generates energy from specific power resources upon confirmation from specified Project Participants of their agreement to pay electric rates based, in part, on the costs associated with such resources. This SMDG Rate Agreement is intended to implement provisions in the ASA relating to PWRPA’s flexible power procurement program, including specifically Section 4.5 of the ASA and the PWRPA Allocation Policy, relating to the costs and benefits of so-called “Specific Projects.”
- 3.2 Local Regulatory Authority:** As described in Section 5.1 of the ASA, the Board is the LRA for PWRPA and, among other things, establishes rates and adopts policies for retail electric service provided by PWRPA to the Project Participants consistent with the ASA and subject to the following:

- 3.2.1 Rates:** The Board shall establish rates to ensure recovery of the SMDG Costs (as defined in Article 4, below) from BCID pursuant to or not otherwise in conflict with the terms of this SMDG Rate Agreement.
- 3.2.2 Policy Changes:** The Board may adopt policies relating to or affecting PWRPA's Generation Entitlement Share of the SMDG as may be reasonably necessary in the exercise of the Board's role as LRA for PWRPA; provided, however, such policies shall not conflict with the terms of this SMDG Rate Agreement unless BCID consents to such change in writing.
- 3.3 SMDG Agreements:** Consistent with its administration of other power resources, only PWRPA, and not BCID, shall have privity of contract with respect to the SMDG PPA and other agreements relating to PWRPA's Generation Entitlement Share. PWRPA shall ensure the SMDG PPA specifies that BCID has a third party beneficiary interest in the SMDG PPA.
- 3.4 CEQA:** BCID shall be the lead agency for compliance with the California Environmental Quality Act. PWRPA shall be a responsible agency.

ARTICLE 4 RATE PROVISIONS

- 4.1 Participating Customer Liability for SMDG Costs:** By executing this SMDG Rate Agreement, BCID agrees to pay rates established by the Board that reflect, among other things, all costs reasonably associated with PWRPA's Generation Entitlement Share, as further described below.
- 4.1.1 General:** BCID shall pay through rates its share (as determined by its respective SMDG Rate Percentage) of PWRPA's costs associated with PWRPA's Generation Entitlement Share, which shall include (a) all costs paid by PWRPA under the SMDG PPA and (b) such other costs determined by the Board from time to time to be reasonably related to PWRPA's administration and operation of the SMDG PPA and this SMDG Rate Agreement ("SMDG Costs").
- 4.1.2 Obligation for the Term of the SMDG PPA:** BCID acknowledges and agrees as follows:
- (a.) the term of the SMDG PPA is expected to continue for 35 years from the Commercial Operation Date for the respective SMDG facility;
 - (b.) the Contract Price applicable to PWRPA is shown in Schedule 2-1 to the SMDG PPA; and
 - (c.) BCID's rate obligation under this SMDG Rate Agreement shall continue for the term of the SMDG PPA and such additional time, if any, as determined by the Board to be necessary for the recovery of all SMDG Costs.

4.1.3 Cost Allocation: Section VI of Exhibit E to the ASA describes various formulas used to implement cost allocation principles in the ASA. In light of BCID's SMDG Rate Percentage (100%), the SMDG Costs shall be allocated entirely to BCID.

4.1.4 Recovery of All Fees and Costs: Without limiting the generality of the various cost recovery provisions in the ASA and under California law, and notwithstanding Section 11.1 of the ASA (as implemented pursuant to Section 8.1 of the Joint Powers Agreement), PWRPA shall be entitled to recover from BCID, in addition to the cost responsibility charge described in Section 4.3, attorneys' fees, expenses and costs reasonably necessary to obtain such determination and to recover amounts due as a result of BCID's default.

4.1.5 Financial Remedial Actions: Should BCID be determined to be in Continuing Default, PWRPA shall have the right at any time or from time to time without after at least 30 calendar days notice to BCID, any such notice being hereby expressly waived, to pay the unpaid amount in the following manner and order of sequence ("Financial Remedial Actions"):

- (a.) Withdraw any and all funds available in BCID's P3-RCA account that was established by the PWRPA RPS Cost of Compliance Rule.
- (b.) Withdraw any and all funds available in BCID's Public Purpose Program Account, regardless of their categorization.
- (c.) Withdraw any and all funds available in the BCID's Allowance Value account established by the PWRPA Cap-and-Trade Cost of Compliance Rule.
- (d.) Withdraw any and all funds available in BCID's Environmental Attribute Value account.
- (e.) Increase the rate for all electricity sales to BCID using an RPS Compliance Adder of \$35/MWh.

4.2 Implementation of the PWRPA Allocation Policy: The PWRPA Allocation Policy shall be implemented with respect to this SMDG Rate Agreement as follows:

- (a) PWRPA's Generation Entitlement Share shall be allocated using the rules for the "Energy Efficiency" Tier.
- (b) In accordance with the RPS Cost of Compliance Rule adopted by Resolution 14-04-04, the Renewable Energy Certificates associated with the SMDG electricity generation project shall be allocated to BCID's assigned share of PWRPA's RPS compliance obligation.

4.3 Withdrawal or Termination

4.3.1 SMDG Cost Responsibility Charge: As generally described in Sections 10.2 and 10.3 of the ASA, a Project Participant that withdraws from the ASA or has its participation under the ASA terminated shall, among other things, continue to be responsible for its relative share of the net

unavoidable costs of PWRPA's generation resources. In addition to other terms and conditions in the ASA, BCID agrees that if it withdraws from the ASA or has its participation under the ASA terminated ("Departing SMDG Participant"), it shall continue to be responsible for the net unavoidable costs associated with its allocation of costs from PWRPA's Generation Entitlement Share ("SMDG Cost Responsibility Charge"). The Board, in its role as LRA, shall determine the amount of the SMDG Cost Responsibility Charge.

4.3.2 Cooperation; Withdrawal: As described in Recital 3, above, PWRPA acknowledges that the SMDG Projects are co-located with BCID's retail load in order to effectuate several environmental and electrical benefits. If BCID elects to withdraw from the ASA, PWRPA shall cooperate in good faith with BCID, as requested by BCID, in order to ensure that the SMDG Projects remain co-located with BCID's retail load. Such cooperation may include, but shall not be limited to, assigning the SMDG PPA to BCID and rearranging the electric distribution system; provided, however, in all instances BCID shall reimburse PWRPA for its costs incurred in such cooperative efforts.

ARTICLE 5 TERM, TERMINATION AND ASSIGNMENT

5.1 Term: The term of this SMDG Rate Agreement shall begin on the Effective Date and, unless earlier terminated, shall continue concurrent with the term of the SMDG PPA as it relates to PWRPA, and such additional time as determined by the Board to be necessary for the recovery of all SMDG Costs.

5.2 Termination

5.2.1 Board Action and Consent by the Participating Customers: This SMDG Rate Agreement may be terminated by PWRPA at any time upon reasonable advance notice to BCID upon adoption of a resolution by the Board directing PWRPA to terminate this SMDG Rate Agreement; provided, however, (a) such resolution shall not be effective unless BCID consents to the termination in writing and (b) prior to such termination, and if requested by BCID, PWRPA shall cooperate with BCID as may be reasonably necessary to modify or assign the SMDG PPA or otherwise provide a means by which BCID may receive economic benefits from the operation of the SMDG comparable to the economic benefits BCID receives under this SMDG Rate Agreement. Without limiting the generality of the foregoing in clause (b), above, PWRPA acknowledges that the SMDG Projects are co-located with BCID's retail load in order to effectuate several environmental and electrical benefits, and therefore PWRPA agrees to cooperate in good faith with BCID, as requested by BCID and as generally described in Section 4.3.2, in order to ensure that the SMDG Projects remain co-located with BCID's retail load.

5.2.2 Default: In addition to all other remedies provided in this SMDG Rate

Agreement and under law, PWRPA may terminate this SMDG Rate Agreement if BCID is in material default of this SMDG Rate Agreement and fails to timely cure such material default following 30-calendar days notice and reasonable opportunity to cure.

- 5.2.3 Withdrawal and Payment of SMDG Cost Responsibility Charge:** This SMDG Rate Agreement shall be terminated with respect to BCID if BCID withdraws from the ASA and fully pays the SMDG Cost Responsibility Charge and any costs associated with PWRPA's cooperative efforts, as described in Section 4.3.2.

ARTICLE 6 MISCELLANEOUS

- 6.1 Severability:** If one or more clauses, sentences, paragraphs or provisions of this SMDG Rate Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this SMDG Rate Agreement shall not be affected thereby and shall be treated as lawful and valid, and shall be enforced to the maximum extent possible.
- 6.2 Further Assurances:** BCID agrees to execute and deliver all further instruments and documents and take all further actions that may be reasonably necessary to effectuate the purposes and intent of this SMDG Rate Agreement.
- 6.3 Counterparts:** This SMDG Rate Agreement may be executed in any number of counterparts, including through facsimile signatures, and upon execution by PWRPA and BCID each executed counterpart shall have the same force and effect as an original document and as if PWRPA and the Participating Customer had signed the same document. Any signature page of this SMDG Rate Agreement may be detached from any counterpart of this SMDG Rate Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this SMDG Rate Agreement identical in form but having attached to it one or more signature pages.

**ARTICLE 7
SIGNATURE**

IN WITNESS WHEREOF, PWRPA and the Participating Customer have executed this SMDG Rate Agreement as of date written below.

POWER AND WATER RESOURCES POOLING AUTHORITY

By:

Title: _____

Date: _____

BANTA CARBONA IRRIGATION DISTRICT

By:

Name: _____

Title: _____

Customer: _____

Date: _____

**Power & Water Resources Pooling Authority
Resolution 23-08-12**

Attachment C to Resolution 23-08-12

Form of Power Purchase Agreement

Banta Carbona Irrigation District

Solar Photovoltaic Project

Documents Included:

1. Solar Power & Services Agreement by and between BCID Solar, LLC and Power and Water Resources Pooling Authority.
2. Agreement for Solar Energy Ground License, by and between Banta-Carbona Irrigation District (as Licensor) and BCID Solar, LLC (as Licensee).

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement (this "Agreement") is made and entered into as of _____, 2023 (the "Effective Date"), between BCID Solar, LLC, a Delaware limited liability company ("Seller"), and Power and Water Resources Pooling Authority, a California public agency, ("Purchaser"); and, together with Seller, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Banta-Carbona Irrigation District, a California public water agency ("Licensor"), as the owner of the Premises (as hereafter defined), has executed the License Agreement (as hereafter defined) with Seller, such License Agreement giving Seller the rights to build, operate, and maintain the System (as hereafter defined); and

WHEREAS, Purchaser desires that Seller install and operate a solar photovoltaic system at the Premises for the purpose of providing Solar Services (as hereafter defined), and Seller is willing to do the same.

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

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

Exhibit 1: Special Terms and Conditions

Exhibit 2: General Terms and Conditions

Exhibit 3: Performance Guaranty

IN WITNESS WHEREOF and in confirmation of their consent to this Agreement and intending to be legally bound hereby, Seller and Purchaser have executed this Agreement as of the Effective Date.

PURCHASER

Power and Water Resources Pooling Authority

SELLER

BCID Solar, LLC

By: _____
Name: David Weisenberger
Title: Chairman of the Board

By: _____
Name: Evan Riley
Title: Authorized Person

EXHIBIT 1
Special Terms and Conditions

The following Schedules are incorporated by reference and made part of this Agreement:

Schedule 1-1	Description of the Site, System and Scope of Work
Schedule 1-2	Electricity Rates
Schedule 1-3	Early Termination Fee
Schedule 1-4	Estimated Annual Production
Schedule 1-5	Notice Information

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Schedule 1-1: Description of the Site, System and Scope of Work

A. Site	
APN:	A parcel of real property located in San Joaquin County, California, with the APN set forth in the License Agreement.
B. Solar System Description	
Interconnection Type:	PG&E Rule 21
Solar System Size (kW dc):	5,000 kW dc
Solar System Size (kW ac):	3,600 kW ac
C. Scope of Work	
Overview:	Design and supply grid-interconnected, ground-mounted solar electric (PV) system

The Parties acknowledge and agree that, upon written notice to the Purchaser, Seller may update Part B of the table set forth on this Schedule 1-1 after the Effective Date to reflect the current System design.

Schedule 1-5 – Notice Information

Purchaser:

**Power and Water Resources Pooling
Authority**
Attn: Bruce McLaughlin
General Manager
3514 W. Lehman Road
Tracy, CA 95304

Seller:

BCID Solar, LLC
Attn: Evan Riley
1808 Wedemeyer Street, Suite 221
San Francisco, CA 94129

Financing Party:

[To be provided by Seller when known]

EXHIBIT 2
General Terms and Conditions

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Adjustment Maximum” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” has the meaning set forth in the Preamble.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of 60 days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

“CAISO” means the California Independent System Operator.

“Claims” has the meaning set forth in Section 16.2.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Contract Year” means a 12-month period commencing on the Commercial Operation Date and each succeeding 12-month period; if the Commercial Operation Date does not occur on the first day of a month, the first Contract Year shall be deemed to include that portion of the month in which the Commercial Operation Date occurred plus the succeeding 12-month period

such that every subsequent Contract Year shall commence on the first day of a month and end on the last day of the month immediately preceding such anniversary.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which this Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Seller under the circumstances described in Section 2.2(a), Section 4.3(a), or Section 11.2, and in the amount described on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions).

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Electrical Energy” means the total quantity of electricity generated by the System that is recorded by Seller’s metering equipment pursuant to Section 4.2 and delivered as Pumping Energy or Export Energy. For the purpose of clarity, all Electrical Energy shall be classified as either Pumping Energy or Export Energy.

“Environmental Attributes” means the characteristics of electric power generation at the System that have intrinsic values, separate and apart from the Electrical Energy, including, without limitation, carbon trading credits, renewable energy credits or certificates, capacity attributes, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products.

“Environmental Documents” has the meaning set forth in Section 7.2(h).

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Seller and set forth in Exhibit 1 (Special Terms and Conditions).

“Expiration Date” means the date on which this Agreement terminates by reason of expiration of the Term.

“Export Energy” means the quantity of Electrical Energy delivered to and measured by CAISO’s revenue-grade meter.

“Export Rate” means the price per kWh as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Final I/C Cost” means the final interconnection costs for the System set forth in the final system impact study provided by CAISO to Seller.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System, (ii) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Seller (or an Affiliate of Seller) with respect to the System, or (iii) any Person acquiring a direct or indirect interest in Seller or in Seller’s interest in this Agreement or the System as a tax credit investor.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means this Exhibit 2 (General Terms and Conditions) of this Agreement, including all Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Indemnified Parties” has the meaning set forth in Section 16.1.

“Indemnifying Parties” has the meaning set forth in Section 16.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“Liabilities” has the meaning set forth in Section 16.1.

“License Agreement” means that certain Agreement for Solar Energy Ground License by and between Seller and Licensor to be entered into after the Effective Date, as amended, restated, or otherwise modified from time to time.

“Licensor” has the meaning set forth in the recitals to this Agreement.

“Liens” has the meaning set forth in Section 7.1(e).

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Party” or “Parties” has the meaning set forth in the preamble to this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-existing Environmental Conditions” means the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Seller’s commencement of construction at the Premises.

“Premises” has the meaning set forth in the Site Control Agreement.

“Pumping Energy” means the quantity of Electrical Energy that is delivered to the Purchaser for resale for the water-related loads of customers.

“Pumping Rate” means the price per kWh as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), subject to any Interconnection Adjustment defined therein.

“Purchaser” has the meaning set forth in the preamble to this Agreement.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Representative” has the meaning set forth in Section 15.1.

“Seller” has the meaning set forth in Exhibit 1 (Special Terms and Conditions).

“Seller Default” has the meaning set forth in Section 11.1(a).

“Seller Indemnified Parties” has the meaning set forth in Section 16.2.

“Security Interest” has the meaning set forth in Section 8.2.

“Site” has the meaning set forth in Schedule 1-1.

“Site Control Agreement” means the License Agreement.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies, and any other solar or renewable energy subsidies and incentives. This does not include any public grant funding that is applied for, and directly received by, either the Purchaser or the Licensor.

“Solar Insolation” means the amount of solar energy falling on a particular location, as specified by Seller, as measured in kWh per square meter.

“Solar Services” has the meaning set forth in Section 5.3.

“Solar Services Payment” has the meaning set forth in Section 6.1.

“Special Conditions” means Exhibit 1 of this Agreement, including all Schedules thereto.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent or (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring.

“System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Term” has the meaning set forth in Section 2 of Exhibit 1 (Special Terms and Conditions).

“Termination Date” means the date on which this Agreement ceases to be effective, including on an Early Termination Date or the Expiration Date.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term. The Term of this Agreement shall commence on the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Term, unless terminated earlier pursuant to the provisions of this Agreement.

2.2 Early Termination.

(a) Purchaser may terminate this Agreement during the Term for any reason upon 60 days' prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions), and Seller shall cause the System to be disconnected and removed from the Premises. Upon Purchaser's payment to Seller of the Early Termination Fee, this Agreement shall terminate automatically, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth.

(b) Seller may terminate this Agreement during the Term (i) if the Interconnection Adjustment exceeds the Adjustment Maximum or (ii) if the License Agreement is terminated pursuant to its terms (in each case, with no liability of Purchaser to pay any Early Termination Fee). Upon Seller's written notice to Purchaser of its intent to terminate this Agreement, this Agreement shall terminate automatically, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth in this Agreement.

2.3 Conditions of this Agreement Prior to Commercial Operation Date.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) provide written notice to Purchaser that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(ii) Seller determines that the Site or Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System.

(iii) Site conditions (including environmental conditions) or construction requirements exist that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the Electrical Energy from the System as designed.

(iv) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the System.

(v) Seller is unable to obtain financing for the System on terms and conditions satisfactory to it.

(vi) There has been a material adverse change in the rights of Seller to construct the System on the Premises.

(vii) Seller has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System or that interconnection costs or interconnection schedule are not obtained from CAISO on terms and conditions satisfactory to it.

(viii) Purchaser has determined that there are easements, CCRs or other land use restrictions, liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

(ix) There has been a material adverse change in Purchaser's creditworthiness.

(x) The License Agreement is terminated pursuant to its terms.

If any of the conditions set forth in Section 2.3(a) are partly or wholly unsatisfied, and Seller wishes to revise the information in Exhibit 1 (Special Terms and Conditions), then Seller may propose modifications to Exhibit 1 (Special Terms and Conditions) for acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions, Seller may terminate

this Agreement as provided in Section 2.3(a). If Purchaser accepts such revised Special Conditions, such revised Special Conditions shall be deemed an amendment of this Agreement, and this Agreement shall remain in force and effect upon execution of the modification by both Parties.

If this Agreement is terminated prior to the Commercial Operation Date, pursuant to Section 2.3(a), but after the System, or any part of it (including System mounting pads or other support structures), has been built on the Premises, such termination shall be subject to the removal provisions of the Site Control Agreement.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Seller will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1-1 of Exhibit 1 (Special Terms and Conditions) and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Seller shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.2 Approvals; Permits. Seller shall obtain and maintain all necessary consents, approvals and permits required to for Seller to perform its obligations under this Agreement, including but not limited to those related to CAISO, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract or CCR; provided, that, Purchaser shall reasonably assist Seller in obtaining any such consents, approvals and permits at no cost to the Purchaser. Seller shall pay for all costs and expenses needed to obtain such approvals and permits.

3.3 System Acceptance Testing.

(a) Seller shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating and delivering both Export Energy and Pumping Energy for a sum total of four continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by CAISO, then Seller shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

4. SYSTEM OPERATIONS.

4.1 Seller as Owner and Operator. The System will be owned by Seller or Seller's Financing Party and will be operated and maintained and, as necessary, repaired by Seller at its sole cost and expense; provided, that any repair or maintenance costs incurred by Seller as a result of Purchaser's negligence or breach of its obligations hereunder, shall be reimbursed by Purchaser, except for any repairs or maintenance costs which arise out of or are caused by naturally-occurring flooding events. Notwithstanding the forgoing, Purchaser agrees that it will not intentionally cause any flooding of the Premises as a result of its ongoing operations.

4.2 Metering. Seller shall install and maintain a revenue grade kilowatt-hour (kWh) meter for the measurement of Electrical Energy provided by the System and may, at its election, install a revenue grade kilowatt-hour (kWh) meter for the measurement or calculation of Export Energy and Pumping Energy.

4.3 System Disruptions.

In the event that (x) Purchaser repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (y) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Seller for all work required by Seller to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Seller for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced Solar Incentives during the Disruption Period. For the purpose of

calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first 12 months of operation, the average over such period of operation). Upon Purchaser's written request, Seller will provide reasonable documentation supporting its lost revenue calculations.

5. DELIVERY OF SOLAR SERVICES.

5.1 Electric Power Purchase Requirement. Purchaser agrees to accept and purchase 100% of the Electrical Energy during each relevant month of the Term. While the Electrical Energy is calculated and billed on a per kWh basis as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), it represents a package of services and benefits, including any reduction in Purchaser's peak demand from CAISO.

5.2 Estimated Annual Production. The annual estimate of Electrical Energy with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Term is set forth in Schedule 1-4 of Exhibit 1 (Special Terms and Conditions).

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of Pumping Energy and Export Energy includes the associated Environmental Attributes (collectively, the "Solar Services"), which shall be owned by Purchaser for the duration of the Term. Purchaser's purchase of Solar Services does not include Solar Incentives, which shall be owned by Seller or Seller's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives based upon the installation of the System at the Premises, and shall, at the request, and sole expense, of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3.

5.4 Title to System. Throughout the duration of this Agreement, Seller or Seller's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller or Seller's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Seller a monthly payment (the "Solar Services Payment") for the Electrical Energy generated by the System during each calendar month of the Term equal to the sum of (x) the product of (i) the Pumping Energy and (ii) the Pumping Rate plus (y) the product of (i) the Export Energy and (ii) the Export Rate. In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, Purchaser may terminate this Agreement upon notice in writing to Seller in accordance with the terms of Section 2.2(a), including, without limitation, the payment to Seller of the Early Termination Fee.

6.2 Invoice. Seller shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The invoice shall include a detailed summary of the calculations set forth in Section 6.1. The last invoice shall include production only through the Termination Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within 20 days after the date of the applicable Invoice Date.

6.4 Method of Payment. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder,

including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Seller's Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, and (y) immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises.

(b) System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(d) Health and Safety. Seller shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Seller shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Seller's performance or non-performance of its obligations hereunder. If Seller breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien; provided, however, that Seller shall have the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such Lien from title to the Premises or that assure that any adverse judgment with respect to such Lien will be paid without affecting title to the Premises.

(f) Indemnification. Seller shall indemnify, hold harmless and defend Purchaser from and against all claims, pay costs and expenses, and conduct all actions required under Environmental Laws in connection with any Hazardous Materials released, spilled or deposited at, on above or below the Premises by the Seller, except for any Pre-Existing Environmental Conditions.

(g) System Removal Bond. Within 60 days after the date this Agreement shall have no more than five years remaining in its Term, Seller shall procure a bond from a reputable surety, in an amount to be determined by an independent engineer reasonably experienced at calculating decommissioning costs for photovoltaic projects in the State of California, guaranteeing the performance of Seller's removal obligations described in the Site Control Agreement.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Seller if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Seller it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein however Purchaser is authorized to encumber the Premises either directly

or indirectly, including the placement of any liens on the Premises, provided such encumbrances do not impair or impede Seller's purpose under this Agreement or with respect to the System. If Purchaser breaches its obligations under this Section, it shall immediately notify Seller in writing, shall promptly cause such Lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Purchaser shall comply with Applicable Law in connection with providing Seller with reasonable access to the Premises and in performing any of its obligations under this Agreement. Purchaser shall ensure that any authorizations required in order to enter into this Agreement and make the Premises available to Seller for the purposes of this Agreement, are obtained or provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall reasonably cooperate with Seller to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Seller. Purchaser shall provide to Seller copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Seller or to which Seller is a party. Seller is responsible for all costs and expenses for such compliance.

(d) Use of System. Purchaser will not use Electrical Energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

(e) Financial Statements. Purchaser shall provide to Seller its publicly available and audited financial statements as requested by Seller within 15 Business Days of Seller's request.

(f) Executed Interconnection Agreement. Purchaser shall execute an interconnection agreement and all other documentation required by CAISO to the reasonable satisfaction of the Seller.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation 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;
- (e) to its actual knowledge, there is no litigation, action, proceeding or investigation pending or threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations of Purchaser. Purchaser represents and warrants to Seller as of the Effective Date that:

- (a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party;

(b) the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;

(c) no existing lease, mortgage, security interest or other interest in or lien upon the Premises exists that could attach to the System as an interest adverse to Seller's Financing Party's Security Interest therein;

(d) there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement; and

(f) Purchaser has no actual knowledge the Premises is not in compliance with Environmental Laws.

8.3 **NO OTHER WARRANTIES.** THE WARRANTIES SET FORTH IN SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 8, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 8.1 AND 8.2, 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.

9. TAXES AND GOVERNMENTAL FEES.

9.1 **Purchaser's Taxes.** Purchaser is responsible for the payment of, or reimbursement of Seller, for all taxes, fees, or charges assessed on the generation, sale, delivery or consumption of Electrical Energy produced by the System. Seller shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Seller and payable by Purchaser.

9.2 **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of Electrical Energy under this Agreement; and (2) personal property taxes imposed on the System.

10. FORCE MAJEURE.

10.1 **Definition.** "**Force Majeure Event**" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including, without limitation, the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Seller or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, with jurisdiction thereof (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action or inaction). A Force Majeure Event shall not be based on the economic hardship of either Party, or upon the expiration of any lease of the Premises by the Purchaser from the owner of the Premises.

10.2 **Excused Performance.** Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; **provided** that the Party claiming relief under this Article 10 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; **provided, however,** that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. Notwithstanding anything in this Agreement to the contrary, if a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of 180 days, then Purchaser shall be entitled to terminate this Agreement upon 90 days' prior written notice to Seller. If at the end of such 90 day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2(a) (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Seller Defaults and Purchaser Remedies.

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

(i) A Bankruptcy Event shall have occurred with respect to Seller; and

(ii) Seller breaches any material representation, covenant or other term of this Agreement and (A) if such breach can be cured within 30 days after Purchaser's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such 30 day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Seller Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Purchaser may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement.

(c) No Early Termination Fee. Section 2.2(a) of this Agreement shall not apply to any termination of this Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Seller's Remedies.

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

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within 30 days after Seller's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such 30 day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Seller any undisputed amount due Seller under this Agreement within 30 days from receipt of notice from Seller of such past due amount.

(b) Seller's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Seller may terminate this Agreement and upon such termination, (A) Seller shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2(a), and (B) Seller may exercise any other remedy it may have at law or equity or under this Agreement.

11.3 Removal of System. Upon any termination of this Agreement pursuant to this Article 11, Seller will remove the System pursuant to the Site Control Agreement.

12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

12.2 A Party's maximum liability to the other Party under this Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement or environmental claims and (ii) any obligation of Purchaser to pay Solar Service Payments, or the Early Termination Fee.

13. ASSIGNMENT.

13.1 Assignment by Seller. Seller shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without providing prior written notice to Purchaser. Purchaser acknowledges that Seller may assign this Agreement in connection with development, construction and/or permanent financing facilities, including without limitation structured tax equity and/or securitization financing. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Schedule 2-1 of this Exhibit 2 (General Terms and Conditions) and agrees to provide such estoppels and acknowledgments as Seller may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

13.2. Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) the collateral assignment by Seller to the Financing Party, of Seller's right, title and interest in, to and under this Agreement, as consented to by Purchaser under Section 13.1 of this Agreement.

(b) that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller's interests in this Agreement.

(c) that it has been advised that Seller has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

13.3 Assignment by Purchaser. Purchaser shall not assign this Agreement or any interest therein, without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Within 90 days of Purchaser providing the Seller with information on credit, interconnection transferability, and any other information reasonably requested by Seller, Seller will provide Purchaser a determination if it consents to such Assignment. Any Assignment by Purchaser without the prior written consent of Seller shall not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or at such other address as may be designated in writing to the other Party from time to time. In the event a Party (including a Financing Party) desires to change the notice address, the Party desiring such change shall provide written notice to all other Parties of such change.

14.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by email (with PDF notice attached) and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. RESERVED.

16. INDEMNITY.

16.1 General. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from (1) any Claim (as defined in Section 16.2 relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 8 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 16.1 does not apply to Liabilities arising out of or relating to any form of Hazardous Materials or other environmental contamination, such matters being addressed exclusively by Section 16.3.

16.2 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 16.2 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 16.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

16.3 Environmental Indemnification.

(a) 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 Materials to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

(b) 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 Materials to the extent deposited, spilled or otherwise caused by Purchaser or any of its contractors, agents or employees.

17. INSURANCE.

17.1 Generally. Seller shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Seller shall carry adequate property loss insurance on the System which need not be covered by Purchaser's property coverage. The amount and terms of property insurance coverage will be determined at Seller's sole discretion. Purchaser shall maintain insurance coverage as set forth in Exhibit 1 (Special Terms and Conditions). It is understood that all such insurance shall be independent and not tied to any indemnity provision. It is the intention of the parties that the additional insured coverage to be provided hereunder shall provide primary and first dollar coverage. In addition, it is understood and agreed that Seller's obtaining or failure to obtain the required insurance shall in no way relieve Seller from its indemnity obligations hereunder. Further, Seller's indemnity obligations shall extend to the full amount of any damage, loss or liability described in the indemnity provisions of this Agreement, and the Seller's indemnity obligations shall not be limited to the amount of insurance obtained or required. Failure of Seller to obtain and maintain insurance provided herein shall be deemed a Seller Default pursuant to Section 11.1, and Purchaser shall be entitled to relief as set forth therein. Seller shall cause each contractor, subcontractor, material supplier,

and/or its agents employed/engaged by Seller to purchase and maintain insurance of the type coverage and with limits specified above.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party 30 days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Seller and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to this Agreement, including these General Conditions as incorporated by reference, are integral parts of this Agreement and are an express part of this Agreement. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of Exhibit 1 (Special Terms and Conditions) shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 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.

18.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Seller to enforce its rights against Purchaser under this Agreement.

18.6 Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Seller Covenant), Sections 7.2(d), (e), (f), (g) and (j) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any choice of law principles.

18.9 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.13 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic “pdf” delivery of the signature page or DocuSign.

18.14 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.

18.15 Liquidated Damages Not Penalty. Upon early termination, Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages. Purchaser further acknowledges that Seller’s actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser’s rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller’s actual damages.

[Remainder of page intentionally left blank.]

Schedule 2-1

Certain Agreements for the Benefit of the Financing Parties

Purchaser acknowledges that Seller will be receiving financing accommodations from one or more Financing Parties and that Seller may sell or assign the System or this Agreement and/or may secure Seller's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Seller to a Financing Party, of Seller's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Purchaser under this Agreement, inclusive of a reasonable description of Seller default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Seller to cancel, modify or terminate this Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

(i) The Financing Party, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement and only in the event of Seller's or Purchaser's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

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

(iii) Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

(iv) Upon any default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Purchaser shall enter into a new agreement with the Financing Party or its designee having the same terms and conditions as this Agreement.

(d) Right to Cure.

(i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the expiration of any notice and cure period applicable to Seller. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and

the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

(ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Seller's assets and shall, within the time periods described in Sub-section (c)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect

(e) Release and Waiver; Financing Agreement Defaults. Until such time as all of Seller's obligations to any Financing Party under an agreement between Seller and a Financing Party (a "Financing Agreement") (excluding contingent indemnification and reimbursement obligations that, by their express terms, survive the repayment of the loans, interest, fees and other amounts owed under said Financing Agreement) have been paid in full, Purchaser hereby waives, releases and relinquishes to said Financing Party all right, title, interest, claim and lien which Purchaser has or may in the future have, under any and all applicable laws, including statutory rights, in, to or against the System. The System shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by Purchaser. If an event of default occurs and is continuing under a Financing Agreement, Purchaser agrees that the affected Financing Party has the right to (i) enter the Premises to remove or dispose of the System at any time; (ii) take possession of and succeed to all of Seller's right, title and interest under this Agreement, including the right to operate the System, and/or (iii) prepare the System for sale and/or conduct a sale or liquidation of the System on the Premises and/or store the System on the Premises for a reasonable period in connection therewith. The Financing Party shall not be liable for rental storage charges under this Agreement or otherwise; provided, however, that said Financing Party agrees to remove or abandon the System in accordance with the requirements of Section 2.5 of this Agreement, which expressly requires that said Financing Party: (i) remove of all of the tangible property comprising the System from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date; (ii) return the Premises to its original condition, including removal of all System mounting pads or other support structures, except for ordinary wear and tear; (iii) leave the Premises in neat and clean order. For the avoidance of doubt, the Financing Party would not be required to replace or reconstruct any improvements removed or demolished by the Seller or Purchaser during construction or maintenance of the System. If said Financing Party fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (including all System mounting pads or other support structures) at said Financing Party's reasonable cost. Nothing herein or elsewhere shall be deemed to prevent or limit a Financing Party, at its option, from abandoning any part of the System. Purchaser agrees that any action taken by a Financing Party to exercise its remedies under a Financing Agreement shall not constitute a default or event of default under this Agreement, and this Agreement shall continue in full force and effect following the exercise of such remedies. Any assignment of the membership interests in the Seller shall constitute a permitted assignment under this Agreement and this Agreement shall continue in full force and effect following such assignment, without the requirement of any further documentation regarding such assignment between Seller and Purchaser.