

**Power & Water Resources Pooling Authority
Resolution 24-12-15**

**ARVIN EDISON WATER STORAGE DISTRICT POWER
PURCHASE AGREEMENTS AND RATE AGREEMENTS
FOR 3 DISTINCT SOLAR GENERATION PROJECTS**

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, three (3) solar PV systems (called “Project 1, “Project 2” and “Project 3”) at Arvin Edison Water Storage District (“AEWSD”) shall be interconnected directly to the PG&E distribution system and designed to export energy to the grid controlled by the California Independent System Operator (“CAISO”); and

WHEREAS, Project 1 will be constructed, owned and operated by Whiterock PZ, LLC and PWRPA will enter into a Power Purchase Agreement (“PPA”) to buy all the electrical energy, capacity and renewable energy credits/environmental attributes from Project 1 for a 30-year period; and

WHEREAS, Project 2 will be constructed, owned and operated by EZR Solar, LLC and PWRPA will enter into a Power Purchase Agreement (“PPA”) to buy all the electrical energy, capacity and renewable energy credits/environmental attributes from Project 2 for a 30-year period; and

WHEREAS, Project 3 will be constructed, owned and operated by Sun Valley PV, LLC and PWRPA will enter into a Power Purchase Agreement (“PPA”) to buy all the electrical energy, capacity and renewable energy credits/environmental attributes from Project 3 for a 30-year period; and

WHEREAS, as required by the Aggregation Services Agreement (“ASA”), Project Rate Agreements were prepared between PWRPA and AEWS D as the sole Participating Customer, which among other things, specify the rates, terms and conditions for costs and energy associated with Project 1, Project 2 and Project 3; and

WHEREAS, AEWS D shall provide documentation reasonably satisfactory to PWRPA showing that installation, operation, and maintenance of Project 1, Project 2 and Project 3 have 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 separate and distinct Rate Agreements shall be effective on the first day when all of the following shall have occurred: (a) the respective Rate Agreement has been executed and delivered by AEWS D to PWRPA; (b) the respective Seller has executed the PPA; (c) PWRPA has executed (i) the respective PPA, and delivered it to the Seller and (ii) the respective Rate Agreement, and delivered it to AEWS D; and

WHEREAS, AEWS D desires that Project 1, Project 2 and Project 3 be designated as PWRPA Projects with AEWS D 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 each of the individual Project 1, Project 2 and Project 3 as a distinct 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 AEWS D as the sole “Project Participant” for Project 1, Project 2 and Project 3, 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 for Project 1, Project 2 and Project 3. (Attachment B).

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4. Approves the form of the PPA, subject to non-substantive changes made to it by the General Counsel for Project 1, Project 2 and Project 3. (Attachment C).
5. Authorizes and directs the General Counsel to make any final, non-substantive changes that he believes are necessary to the three distinct Rate Agreements and PPAs, and to distribute them to AEWSD, Whiterock PV, LLC, EZR Solar, LLC and Sun Valley PV, LLC, respectively.
6. Authorizes and directs the Chairman, or designee, to execute the three distinct Rate Agreements and the PPAs.
7. Authorizes and directs authorized representatives of PWRPA to do and perform any and all acts required under the three distinct Rate Agreements and PPAs 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 9th day of December, 2024, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo WD, James ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 WA (86.5% Voting Shares)
NOES	None
ABSENT	Glenn-Colusa ID, Lower Tule River ID, Princeton/Provident ID (13.5% Voting Shares)


David Weisenberger
Chairman


Attest by: Bruce McLaughlin
Secretary

**Power & Water Resources Pooling Authority
Resolution 24-12-15**

Attachment A for Resolution 24-12-15
Project Description

Project 1

Sycamore Spreading Works	
Seller:	Whiterock PV, LLC
APN:	A parcel of real property located at 35.2202 latitude and - 118.7825 longitude in Kern County, California, with the APN set forth in the License Agreement.
Solar System Description	
Interconnection Type:	PG&E WDT
Solar System Size (kW dc):	Approximately 6,930 kWdc
Solar System Size (kW ac):	Approximately 4,999 kWac
Scope of Work	
Overview:	<p>Design, permit, supply, operate, and insure a grid-interconnected, ground-mounted single-axis tracking solar electric (PV) system for the Term of this Agreement.</p> <p>BESS Ready: The System will be “BESS Ready” meaning that it will be designed in such a manner that a future battery energy storage system (“<u>BESS</u>”) can be integrated within the System without the need to upgrade the medium voltage (“<u>MV</u>”) conductors or reconfigure the MV circuit.</p> <p>Power Generator Ready: The System will be “Power Generator Ready” meaning that it will be designed in such a manner that a future generator can be integrated within the System without the need to upgrade the MV conductors or reconfigure the MV circuit.</p>
Term:	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 30-year period.

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Project 2

Tejon Spreading Works	
Seller:	EZR Solar, LLC
APN:	A parcel of real property located at 35.1373 latitude and - 118.8536 longitude in Kern County, California, with the APN set forth in the License Agreement.
Solar System Description	
Interconnection Type:	PG&E WDT
Solar System Size (kW dc):	Approximately 4,100 kWdc
Solar System Size (kW ac):	Approximately 2,999 kWac
Scope of Work	
Overview:	<p>Design, permit, supply, operate, and insure a grid-interconnected, ground-mounted single-axis tracking solar electric (PV) system for the Term of this Agreement.</p> <p>BESS Ready: The System will be “BESS Ready” meaning that it will be designed in such a manner that a future battery energy storage system (“<u>BESS</u>”) can be integrated within the System without the need to upgrade the medium voltage (“<u>MV</u>”) conductors or reconfigure the MV circuit.</p> <p>Power Generator Ready: The System will be “Power Generator Ready” meaning that it will be designed in such a manner that a future generator can be integrated within the System without the need to upgrade the MV conductors or reconfigure the MV circuit.</p>
Term:	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 30-year period.

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Project 3

North Canal Spreading Works	
Seller:	Sun Valley PV, LLC
APN:	A parcel of real property located at 35.2454 latitude and - 118.8302 longitude in Kern County, California, with the APN set forth in the License Agreement.
Solar System Description	
Interconnection Type:	PG&E WDT
Solar System Size (kW dc):	Approximately 2,800 kWdc
Solar System Size (kW ac):	Approximately 2,000 kWac
Scope of Work	
Overview:	<p>Design, permit, supply, operate, and insure a grid-interconnected, ground-mounted single-axis tracking solar electric (PV) system for the Term of this Agreement.</p> <p>BESS Ready: The System will be “BESS Ready” meaning that it will be designed in such a manner that a future battery energy storage system (“<u>BESS</u>”) can be integrated within the System without the need to upgrade the medium voltage (“<u>MV</u>”) conductors or reconfigure the MV circuit.</p> <p>Power Generator Ready: The System will be “Power Generator Ready” meaning that it will be designed in such a manner that a future generator can be integrated within the System without the need to upgrade the MV conductors or reconfigure the MV circuit.</p>
Term:	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 30-year period.

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Attachment B for Resolution 24-12-15

Form of Rate Agreement

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

This **Separately Metered Distributed Generation Rate Agreement – AEWSD 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 Arvin Edison Water Storage District (“AEWSD”). AEWSD 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 AEWSD 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 an SMDG Solar Project on a parcel of land located in Kern County (“AEWSD SMDG”), nominally rated at YY kilowatts–alternating current (“kWAC”). The land and pumping facilities are owned by AEWSD. The SMDG facilities will be owned and operated by XX, 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 AEWSD SMDG facilities (collectively, the “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”). AEWSO is the sole Participating Customer for the SMDG Projects.
8. PWRPA and AEWSO 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 AEWSO 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 AEWSO. PWRPA shall provide notice to AEWSO 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 AEWS (‐Effective Date‐) and (d) AEWS shall have executed the Solar Power License Agreement By and Between XX, LLC and the Arvin Edison Water Storage District (‐Site License‐). PWRPA shall provide written notice to AEWS 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:** AEWS is the sole Participating Customer in the SMDG Projects. As such, AEWS shall receive all energy, Environmental Attributes Value and costs under this SMDG Rate Agreement.
- 2.2.2 Specified SMDG Rate Percentage:** AEWS 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 AEWS D 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 AEWS D consents to such change in writing.
- 3.3 SMDG Agreements:** Consistent with its administration of other power resources, only PWRPA, and not AEWS D, 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 AEWS D has a third party beneficiary interest in the SMDG PPA.
- 3.4 CEQA:** AEWS D 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, AEWS D 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:** AEWS D 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:** AEWS D 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.) AEWS D'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 AEWS D’s SMDG Rate Percentage (100%), the SMDG Costs shall be allocated entirely to AEWS D.

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 AEWS D, 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 AEWS D’s default.

4.1.5 Financial Remedial Actions: Should AEWS D 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 AEWS D, 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 AEWS D’s P3-RCA account that was established by the PWRPA RPS Cost of Compliance Rule.
- (b.) Withdraw any and all funds available in AEWS D’s Public Purpose Program Account, regardless of their categorization.
- (c.) Withdraw any and all funds available in the AEWS D’s Allowance Value account established by the PWRPA Cap-and-Trade Cost of Compliance Rule.
- (d.) Withdraw any and all funds available in AEWS D’s Environmental Attribute Value account.
- (e.) Increase the rate for all electricity sales to AEWS D 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 AEWS D’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, AEWS D 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 AEWS D's retail load in order to effectuate several environmental and electrical benefits. If AEWS D elects to withdraw from the ASA, PWRPA shall cooperate in good faith with AEWS D, as requested by AEWS D, in order to ensure that the SMDG Projects remain co-located with AEWS D's retail load. Such cooperation may include, but shall not be limited to, assigning the SMDG PPA to AEWS D and rearranging the electric distribution system; provided, however, in all instances AEWS D 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 AEWS D 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 AEWS D consents to the termination in writing and (b) prior to such termination, and if requested by AEWS D, PWRPA shall cooperate with AEWS D as may be reasonably necessary to modify or assign the SMDG PPA or otherwise provide a means by which AEWS D may receive economic benefits from the operation of the SMDG comparable to the economic benefits AEWS D 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 AEWS D's retail load in order to effectuate several environmental and electrical benefits, and therefore PWRPA agrees to cooperate in good faith with AEWS D, as requested by AEWS D and as generally described in Section 4.3.2, in order to ensure that the SMDG Projects remain co-located with AEWS D'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 AEWS D 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 AEWS D if AEWS D 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:** AEWS D 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 AEWS D 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: _____

ARVIN EDISON WATER STORAGE DISTRICT

By:

Name: _____

Title: _____

Customer: _____

Date: _____

Attachment C for Resolution 24-12-15

Form of Power Purchase Agreement

DRAFT

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement (this "Agreement") is made and entered into as of [REDACTED], 2024 (the "Effective Date"), between [REDACTED], 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, Arvin-Edison Water Storage District, a California public water agency ("Licensor"), as the owner of the Premises (as hereafter defined), shall execute a License Agreement (as hereafter defined) with Seller after the Effective Date and prior to the Commencement of Construction (as hereafter defined), and such License Agreement shall give Seller the rights to build, operate, and maintain the System (as hereafter defined) at the Premises; 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

[REDACTED], LLC

By: _____
Name: [REDACTED]
Title: [REDACTED]

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 Premises, System and Scope of Work
Schedule 1-2	kWh Rates
Schedule 1-3	Early Termination Fee
Schedule 1-4	Estimated Annual Production
Schedule 1-5	Notice Information

[Remainder of page intentionally left blank]

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

A. Premises	
APN:	A parcel of real property located at [] in Kern County, California, with the APN set forth in the License Agreement.
B. Solar System Description	
Interconnection Type:	PG&E WDT
Solar System Size (kW dc):	[]
Solar System Size (kW ac):	[]
C. Scope of Work	
Overview:	<p>Design, permit, supply, operate, and insure a grid-interconnected, ground-mounted single-axis tracking solar electric (PV) system for the Term of this Agreement.</p> <p>BESS Ready: The System will be “BESS Ready” meaning that it will be designed in such a manner that a future battery energy storage system (“BESS”) can be integrated within the System without the need to upgrade the medium voltage (“MV”) conductors or reconfigure the MV circuit.</p> <p>Power Generator Ready: The System will be “Power Generator Ready” meaning that it will be designed in such a manner that a future generator can be integrated within the System without the need to upgrade the MV conductors or reconfigure the MV circuit.</p>

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 then-current System design.

The Parties further acknowledge and agree that (1) either Purchaser or Licensor shall be responsible for conducting, and the costs associated with, any future transmission level interconnection studies; and (2) in the event that the then existing PG&E interconnection is removed in the future due to construction of the District’s Electrical Distribution Expansion Project, no penalties, rate adders or forfeitures will apply to Purchaser or Licensor as long as all Purchaser representations set forth in Section 8.2 of Exhibit 2 remain true and correct.

Schedule 1-2 – kWh Rates

1. The “Term” is 30 years, beginning on the Commercial Operation Date.
2. The “kWh Rate” with respect to the System under this Agreement shall be in accordance with this Schedule 1-2, subject to any adjustments described herein:

Contract Year	kWh Rate* (\$/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
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19	
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21	
22	
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25	
26	
27	
28	
29	
30	
<p><u>Note:</u> *The kWh Rate for each Contract Year after Contract Year 1 is calculated based on the Contract Year 1 kWh Rate multiplied by a [1.75]% escalation rate for each subsequent year.</p>	

3. kWh Rate Adjustments:
 - (a) *Interconnection Adjustment:* Upon Seller’s receipt of the final system impact study results from CAISO and/or the Utility, Seller will notify Purchaser of the Final I/C Cost, and the kWh Rate will be adjusted as set forth below (“Interconnection Adjustment”):
 - (i) If the Final I/C Cost are \$[], the kWh Rate shall be as set forth in the above tables.

- (ii) If the Final I/C Cost are greater than \$[], the kWh Rate shall be adjusted upwards by \$[0.0023]/kWh for every \$[50,000] that the Final I/C Cost are in excess of \$[] by prorating the kWh Rate listed in the tables above.
- (iii) If the Final I/C Cost are less than \$[], the kWh Rate shall be adjusted downwards by \$[0.0023]/kWh for every \$[50,000] that the Final I/C Cost are less than \$[] by prorating the kWh Rate listed in the tables above.
- (iv) If the Final I/C Cost are greater than \$[] (the “Adjustment Maximum”), the Seller shall have the right to (x) continue development of the System with the adjustment of the kWh Rate limited to \$[]/kWh or (y) terminate this Agreement as set forth in Section 2.2(b) of Exhibit 2 (in which case Purchaser will have no further liability or obligation to Seller arising out of or pursuant to this PPA except as expressly stated herein).

For purposes of clarity, the kWh Rate will be adjusted starting with the first dollar in excess of or less than \$[], as applicable, for any Interconnection Adjustment listed above.

(b) *Other Adjustments.*

- (i) The kWh Rate was determined based on the following assumptions (collectively, the “Assumptions”):
 1. Distribution line upgrades will not exceed \$[].
 2. There will be no costs to Seller to obtain all necessary easements or site control rights for meter aggregations.
 3. Flood mitigation measures for construction or operation of the System will not be required by any Governmental Authority.
 4. Surface Waiver or purchase of mineral rights to achieve ALTA Endorsement 35 is not required.
 5. The construction and operation of the System will be able to obtain approval as a categorical exemption under the California Environmental Quality Act (CEQA), and there will be no conditional use permit or environmental impact report required.
 6. The site for construction of the System is free and clear of any easements or other encumbrances that cannot be mitigated by reasonable efforts such as relocating the system nearby.
 7. The portion of the Premises necessary to construct and operate the System will be delivered to Seller in a condition that is clean, clear, and free of any obstructions and will not require any vegetation removal, grading, or additional site preparation by Seller.
 8. The water level in any spreading basins located beneath the System shall not exceed a maximum depth of thirty-six inches (36”) at any time.
 9. All import tariffs in effect as of the Effective Date are the only such tariffs applicable as of the Commencement of Construction.
- (ii) If any of the Assumptions are not true and it results in additional costs to the Seller, the kWh Rate set forth in this Schedule 1-2 (in addition to and in conjunction with any

Interconnection Adjustments) shall be adjusted upwards by \$[0.0023]/kWh for every \$[50,000] incurred by Seller, such adjustment beginning on the first dollar (the “Additional Rate Adjustments”).

- (iii) Seller shall notify Purchaser in writing no later than forty-five (45) days prior to commencing construction of the System of any deviations or inaccuracies in the Assumptions, provide documentation of the additional costs incurred, and detail any Additional Rate Adjustments as a result. In such event, the Parties shall meet and confer in accordance with Section 2.3(b) of Exhibit 2.

Schedule 1-3 – Early Termination Fee

1. The Early Termination Fee with respect to the System under this Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Contract Year:	Early Termination Fee (\$/Wdc)	Early Termination Fee (\$)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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2. Following the Expiration Date, the Early Termination Fee shall be deemed to be \$0 and Purchaser may take ownership of the System.
3. The Early Termination Fee for Contract Year 1 applies to any Early Termination Date that occurs before the Commercial Operation Date.

Schedule 1-4 – Estimated Annual Production

1. The Estimated Annual Production with respect the System under this Agreement is as follows:

Contract Year	Estimated Annual Production (kWh)
1	
2	
3	
4	
5	
6	
7	
8	
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10	
11	
12	
13	
14	
15	
16	
17	
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2. The Estimated Annual Production values set forth in the table above are estimates (and not guarantees) of approximately how many kWhs are expected to be generated annually by the System based on the size of the System indicated in Schedule 1-1. Seller shall deliver to Purchaser updated Estimated Annual Production values for this Schedule 1-4 immediately following the Commercial Operation Date that reflect the actual System size.

Schedule 1-5 – Notice Information

Purchaser:

Power and Water Resources Pooling Authority

Attn: []

[Address]

[Address]

Seller:

[], 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:

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

“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.

“Commencement of Construction” means the day the Purchaser mobilizes to Premises to begin construction.

“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.

“Construction Plan” is a detailed plan that is to be provided from Seller to Purchaser no less than 90 days in advance of construction and shall include at a minimum, access paths, hours of operation, safety plan, parking area, dust control and any other details relevant to Purchaser’s ongoing recharge operations. Purchaser is to review and provide comments on the Construction Plan within 10 Business Days of receipt.

“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), 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.

“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, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products.

“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.

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

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

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

“kWh 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 and/or Additional Rate Adjustments defined therein.

“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 and prior to the Commencement of Construction, as amended, restated, or otherwise modified from time to time.

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

“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).

“Operations Plan” is a detailed plan that is to be provided from Seller to Purchaser no less than 180 days in advance of the Commercial Operation Date for review and approval by Purchaser. The Operations Plan shall include at a minimum: dates for scheduled maintenance, estimated washing schedule, vegetation management plan including list and potency of chemicals if chemicals are to be used, timeline for application of chemicals, login for data acquisition system, gate code, and emergency contact information.

“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 Schedule 1-1 of Exhibit 1.

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

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

“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).

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

“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.

“Solar Insolation” means the amount of solar energy falling on a particular location, as specified by Seller, as measured in kWh per square meter by an ISO 9060 secondary standard pyranometer or equivalent.

“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 Schedule 1-2 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.

“Utility” means Pacific Gas & Electric Company.

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 (i) after the sixth anniversary of the Commercial Operation Date and (ii) 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 if the Interconnection Adjustment exceeds the Adjustment Maximum pursuant to Section 4(a)(ii)(4) of Schedule 1-2 of Exhibit 1. 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 Commencement of Construction.

(a) In the event that any of the following events or circumstances occur prior to the Commencement of Construction, 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:

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

(ii) Premises conditions (including environmental conditions) or construction requirements exist that were not reasonably 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.

(iii) 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.

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

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

(vi) 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 or the Utility on terms and conditions satisfactory to it.

(vii) There has been a material change in Seller's ability to obtain and maintain all necessary consents, approvals, or permits required for Seller to perform its obligations under this Agreement.

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

(b) 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.

3. **CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

3.1 Installation Work.

(a) 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 and approve all Construction Plans and designs, including engineering evaluations of the impact of the System, including the 10%, 30% and 60% drawing sets, and such approval shall not be unreasonably withheld, delayed or conditioned. Seller will work to incorporate Purchaser design requests into the power plant design including but not limited to: row width, panel height, access paths, ac wire runs, medium voltage pole specification, conductor sizing for medium voltage conductor runs to allow for future conductor uses.

(b) Seller shall, at least thirty (30) days prior to the Commencement of Construction, deliver to Purchaser evidence of a payment and performance bond for the benefit of Purchaser in the aggregate amount equal to the costs to construct the System and shall maintain such bond until the System achieves Commercial Operation. Seller shall provide a decommissioning bond in an aggregate amount \$[REDACTED], to be funded by no later than the twenty-fifth (25th) anniversary of the Commercial Operation Date.

(c) In the event that Seller experiences a Seller Default and fails to complete installation of the System within twenty-four (24) months of Commencement of Construction, Purchaser shall have all rights and remedies set forth in Section 11.1(b) to this Exhibit 2 including, among other things, the obligation of Seller to remove the System and return the Premises to their original condition excluding ordinary wear and tear.

3.2 Approvals; Permits. Seller shall obtain and maintain all necessary consents, approvals and permits required for Seller to perform its obligations under this Agreement, including but not limited to those related to the Utility, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract; 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 Electrical 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 the Utility, 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.

4.2 Metering. Seller shall install and maintain a revenue grade and CAISO grade kilowatt-hour (kWh) meter for the measurement of Electrical Energy provided by the System.

4.3 System Disruptions. In the event 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.

4.4 MV Poles and Conductors. Upon expiration or earlier termination of this Agreement, except a termination in the event of Purchaser Default, Purchaser shall have the right to purchase from Seller the MV poles and conductors that are integrated into the System at their fair market value.

5. DELIVERY OF SOLAR SERVICES.

5.1 Electric Power Purchase Requirement. Purchaser agrees to accept and purchase 100% of the Electrical Energy generated by the System and made available by Seller to Purchaser 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 the Utility.

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 the Electrical 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 to be a part of, or fixture to, the Premises.

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 product of the Electrical Energy multiplied by the kWh Rate.

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.

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 if 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. 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 performing any of its obligations under this Agreement. Purchaser shall ensure that any authorizations required in order to enter into 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.

(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.

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 (other than those that relate to a later date, which shall be true and correct as of such 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) to Purchaser's knowledge, 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;

(c) 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

(d) all information provided by Purchaser to Seller as it pertains to Purchaser's estimated electricity requirements, is accurate in all material respects.

(e) as of the Commencement of Construction, Purchaser has an effective interconnection agreement in good standing with PG&E and such interconnection agreement shall remain in good standing for the duration of this Agreement. Notwithstanding the foregoing, Purchaser is explicitly permitted to alter the interconnection location and/or voltage so long as it does not impact regular and daily operations of the System. In the event that any such alteration of the interconnection should impact the operations of the System, then the provisions set forth in Section 4.3 of this Exhibit 2 shall apply.

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: (i) all taxes, fees, or charges assessed on the generation, sale, delivery or consumption of Electrical Energy produced by the System and (ii) any personal property taxes imposed on the System resulting from the System not receiving the "active solar energy system exclusion" under California Revenue and Taxation Code section 73 (the "Exclusion"). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Seller and payable by Purchaser. Seller shall provide Purchaser detailed property tax statements from the County and/or State to Purchaser.

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

other than any personal property taxes imposed on the System resulting from the loss of the Exclusion as set forth in Section 9.1.

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.

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 including the obligation of Seller to remove the System and return the Premises to their original condition excluding ordinary wear and tear.

(c) No Early Termination Fee. Seller shall not be entitled to the Early Termination Fee pursuant to Section 2.2(a) if this Agreement is terminated due to Seller’s Default.

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 to 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.

12. **LIMITATIONS OF LIABILITY.**

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Parties 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 to a Financing Party or an Affiliate 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.

(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 be void and 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, 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 e-mailed as a PDF to the e-mail address provided by Purchaser in Exhibit 1, Schedule 1-5, or other e-mail address as the Purchaser may request by delivering a notice of change of address to the Seller.

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) 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.
- (b) 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.

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, (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) and an umbrella policy providing excess limits over the primary policies described herein, in an amount not less than \$5,000,000. Additionally, Seller shall carry adequate property loss insurance on the System. The amount and terms of property insurance coverage will be determined at Seller's sole discretion. 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), Section 7.1(d) (Seller Covenant), 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 instead 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 (d)(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. 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.

EXHIBIT 3

Performance Guarantee

This Performance Guaranty (“Guaranty”) sets forth the terms and conditions of a performance guaranty provided by Seller in conjunction with this Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in this Agreement. The term of this Guaranty will be concurrent with the Term of this Agreement. The Parties acknowledge and agree that Table 1.A of this Exhibit 3 will be updated prior to the Commercial Operations Date based upon final System design, with figures equal to 75% of the updated Estimated Annual Production (kWh) set forth in Schedule 1-4.

1. **Guaranty**. Seller guarantees that during the Term of this Agreement, for each Contract Year, the System will generate not less than the Pre-Adjustment Annual Production (kWh) of the System as set forth in **Table 1.A** below; provided that the **Table 1.A** values are subject to downward adjustment for weather conditions (such adjusted value, the “Guaranteed kWh”).

A. Seller will use local weather data to determine the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference:

- (i) satellite data provided by an independent third-party vendor of Seller; or
- (ii) available data from a locally installed weather station at the Premises.

Table 1.A, projected production values assuming average weather conditions:

Contract Year	Pre-Adjustment Annual Production (kWh)
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	
Year 16	
Year 17	
Year 18	
Year 19	
Year 20	
Year 21	
Year 22	

Contract Year	Pre-Adjustment Annual Production (kWh)
Year 23	
Year 24	
Year 25	
Year 26	
Year 27	
Year 28	
Year 29	
Year 30	

B. If at the end of each successive Contract Year (set forth in Table 1.A) the Electrical Energy produced by the System as measured and recorded by Seller (the “Actual kWh”) is less than the Guaranteed kWh for that Contract Year, then Seller shall pay Purchaser the Prorated Amount.

The “Prorated Amount” shall be an amount equal to (i) the kWh Shortfall *multiplied* by (ii) the applicable Performance Guarantee Payment Rate.

The “kWh Shortfall” shall be an amount equal to the *difference* between (i) the Guaranteed kWh and (ii) the Actual kWh.

Any such payment payable to Purchaser shall be credited to Purchaser as a credit on the invoice that is submitted by Seller at the end of such Contract Year.

C. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), Seller will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due. If no payment is due, then no statement or payment will be issued.

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

Contract Year	Performance Guarantee Payment Rate
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	

Contract Year	Performance Guarantee Payment Rate
Year 14	
Year 15	
Year 16	
Year 17	
Year 18	
Year 19	
Year 20	
Year 21	
Year 22	
Year 23	
Year 24	
Year 25	
Year 26	
Year 27	
Year 28	
Year 29	
Year 30	

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):
- A. Force Majeure Event (as defined in this Agreement) and (i) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by CAISO or the Utility; and (ii) theft of the System.
 - B. Purchaser’s material breach of its obligations under this Agreement.
3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a fair and reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System.

AGREEMENT FOR SOLAR ENERGY GROUND LICENSE

THIS AGREEMENT FOR SOLAR ENERGY GROUND LICENSE (this “**Agreement**”) is made and entered into by and between Arvin-Edison Water Storage District, a California public water agency (“**Licensor**”), and [REDACTED], LLC, a Delaware limited liability company (“**Licensee**”), effective as of the date that this Agreement been executed by both Licensor and Licensee (the “**Effective Date**”).

RECITALS

A. Licensor owns the fee simple title to the Land, (as defined on **Schedule 1** attached hereto, and as more particularly described on **EXHIBIT A** attached hereto.

B. Concurrently herewith, Licensee is entering that certain Solar Power & Services Agreement (the “**SPSA**”), by and between Licensee and Power and Water Resources Pooling Authority, a California public agency, wherein Licensee has stated its intent to develop, build, finance own, and interconnect, operate and maintain a ground-mounted, single-axis tracking solar generating facility and desires to investigate the feasibility of such solar operations on all or a portion of the Land, and to license the Premises following such investigations upon the terms and conditions set out in this Agreement.

C. Licensor is willing to grant Licensee the right to investigate the feasibility of solar operations on the Land and to license the Premises on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the amounts to be paid to Licensor by Licensee and the other mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby conclusively established, Licensor and Licensee hereby agree as follows:

1. **Basic Terms Summary.** A summary of the basic terms of this Agreement is set forth on **Schedule 1** (the “**Basic Terms Summary**”). References in the body of this Agreement to a portion of the Basic Terms Summary (e.g., the defined terms in the left-hand column of the Basic Terms Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Basic Terms Summary. References in the Basic Terms Summary to a portion of the body of this Agreement (e.g., Section references in the left-hand column of the Basic Terms Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of this Agreement. Notwithstanding anything set forth above, if there is any inconsistency between the Basic Terms Summary and another portion of this Agreement, the terms of the Basic Terms Summary shall control.

2. **Grant by Licensor; License; Licensed Premises.**

(a) Licensor hereby licenses the Land to Licensee effective upon the License Commencement Date, and Licensee hereby agrees to license the Land from Licensor effective upon the License Commencement Date, all upon the terms and subject to the conditions set forth herein. The license for the

Land shall be limited to investigation to determine the feasibility of solar operations on the Land and to determine the location of the Premises (as defined in Section 2(b)).

(b) Licensor hereby licenses the Premises to Licensee effective upon the date Licensee notifies Licensor of the selection of the Premises pursuant to Section 2(b) (“**Premises License Date**”), and Licensee hereby agrees to license the Premises from Licensor effective upon the Premises License Date, all upon the terms and subject to the conditions set forth herein. The license of the Premises created by this Agreement (the “**License**”) shall commence immediately upon the Premises License Date. Except as otherwise set forth herein, the parties hereby agree that all of the covenants and agreements contained in this Agreement, touch and concern the Premises and are expressly intended to, and shall, be covenants running with the Premises. Except as otherwise set forth herein, this Agreement shall burden the Premises and shall run with the Premises. To the extent any covenant, right, or obligation set out in this Agreement is not enforceable as a covenant running with the land, such provision shall be deemed an equitable servitude.

(c) The “**Premises**” as used herein shall be the area of the Land to be described in **EXHIBIT B**, together with all personal property, improvements and fixtures located thereon as of the Effective Date and all other appurtenances, tenements, hereditaments, rights and easements pertaining thereto. The Premises shall be selected from the Land, which, on the Effective Date, includes three parcels with an associated preference of priority for determining the Premises. Licensee agrees to use good faith efforts to determine the location of the Premises (i) according to such parcel preference and (ii) prior to the date on which Licensee mobilizes the Premises for construction. Upon Licensee’s selection of the Premises, Licensee shall immediately provide Licensor with written notice of its selection, and the legal description of the Premises shall be attached as **EXHIBIT B** to this Agreement. The parties acknowledge and agree that Licensee’s determination of a suitable parcel is dependent on design, economic, title, and permitting considerations. The parties further acknowledge and agree that Licensor, at its own expense (and without charge from Licensee), shall have the right to install power lines owned by Licensor on power poles owned by Licensee so long as all of the following conditions are met: (x) the power poles have been designed by a licensed engineer in the state of California to carry the extra weight of Licensor’s power lines, (y) there is sufficient capacity on Licensee’s power poles to accommodate Licensor’s power lines, and (z) the addition of Licensor’s power lines will not harm the Licensee’s ability to deliver energy to Purchaser, as that term is defined in the SPSA.

(d) If, for reasons other than Licensee’s breach of its obligations hereunder, a condemnation, or a Force Majeure Event (as defined in the SPSA), Licensee ceases to have access rights to the Premises as necessary to install, operate or maintain the System (as defined in Section 7) prior to the expiration of the Agreement, then Licensee shall have the right to terminate this Agreement pursuant to Section 5(a). Licensee shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Licensee’s rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, including incidental hardware or other support structures, except for ordinary wear and tear.

3. **As-Is.** By entering into this Agreement, Licensee accepts the Land and the Premises in its

present as-is/with all faults condition, subject, however, to any representations and warranties of Licensor set forth herein. Except in the event of a breach of any such representation or warranty or a Default by Licensor under Section 18 of this Agreement, subject to any applicable cure period, Licensor shall have no obligation or liability whatsoever to make any improvements, alterations, or repairs or to pay or reimburse Licensee for any part of the cost thereof. Licensee, as of the Premises License Date, acknowledges that it has conducted any diligence review or other investigation that it has determined are advisable or necessary in order to become familiar with the Premises, its access, and the impact of the terms and conditions of this Agreement and has determined the Premises to be acceptable for the Intended Use (defined below), subject only to Licensee's reliance upon Licensor's representations and warranties set forth herein.

4. License Term.

(a) Licensee's license of the Land shall commence on the License Commencement Date, and shall continue until the Premises License Date.

(b) Licensee's license of the Premises shall commence upon the Premises License Date, and shall continue for the entire Term unless modified or earlier terminated pursuant to the terms hereof.

5. Termination of Agreement.

(a) Termination Rights of Licensee.

(i) Without limiting any other termination rights of Licensee as set forth in this Agreement, Licensee shall have the right to terminate this Agreement as to all or any part of the Premises as follows upon sixty (60) days advance written notice: (i) at any time prior to the Operations Date, upon Licensee's determination, in Licensee's sole and absolute discretion, that it would not be commercially reasonable to proceed with the construction and operation of the System, or (ii) at any time during the Term pursuant to the failure of any condition, not caused by Licensee's negligence or intentional acts or omissions, described in Section 5(b) below. If this Agreement is terminated as to only a portion of the Premises, this Agreement shall remain in effect as to the remainder of the Premises.

(ii) Without limiting any other termination rights of Licensee as set forth in this Agreement, during the Term, Licensee's obligation to pay Rent and continue this Agreement is at all times expressly subject to satisfaction of each of the following conditions: (i) Licensee's obtaining and maintaining all necessary or required approvals from state, federal and local authorities in good faith and fair dealing, (ii) Licensee's obtaining and maintaining, in good faith and fair dealing, any agreement that is necessary for the operation of the System and the sale and delivery of the electricity generated by it, including without limitation an interconnection agreement and power purchase agreement with the applicable utility company, and (iii) Licensee's ability to continuously operate in good faith and fair dealing the System and utilize the Premises for the Intended Use. If any of the foregoing conditions are not satisfied at any time during the Term, Licensee shall have the right to terminate this Agreement upon written notice to Licensor.

(iii) Licensee may terminate this Agreement upon written notice to the Licensor if the SPSA is terminated pursuant to its terms.

(b) Termination Rights of Licensor.

(i) Subject to any Additional Notice Party's (as defined in Section 30) rights under Section 30 of this Agreement, Licensor may terminate this Agreement upon Default of Licensee without payment of the Early Termination Fee including, among other things, a Seller Default (as defined in the SPSA), and Licensee shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the Premises and return the Premises to its original condition, including incidental hardware or other support structures, except for ordinary wear and tear.

6. **Rent.**

(a) The Licensee agrees to pay the sum of Ten Dollars (\$10.00) as rent to the Licensor on the Effective Date (the "**Rent**") as consideration for Licensee's use of the Premises during the Term.

(b) If any overdue installment of Rent is not received by Licensor within 10 days after Licensor provides Licensee written notice of the delinquency, Licensee will pay a late fee to Licensor in the amount of five percent of the unpaid delinquent Rent amount, and Licensee shall pay interest of one and one-half percent per month on the unpaid balance due from the date of Licensor's notice until the principal and the interest is paid in full.

7. **Use and Occupancy.**

(a) Commencing on the Effective Date, Licensee may use the Land to undertake investigations on the Land to determine the location of the Premises and the suitability of the Land for the Intended Use (as defined below).

(b) Commencing on the Premises License Date, and continuing for the duration of the Term, Licensee shall use the Premises for the development, construction, operation, maintenance, repair and replacement of the System (the "**Intended Use**"), including all lawful uses that are incidental or related to, or not inconsistent with, the Intended Use, and/or any other lawful use. The "**System**" shall mean one or more facilities for the generation, collection, conversion, storage, interconnection, transmission and distribution of solar electricity, including, without limitation, solar panels and other components of a solar photovoltaic power array, other facilities for the conversion of solar energy into electricity and the storage of electricity, and related equipment and facilities, including, without limitation, overhead and underground power transmission lines, poles, anchors, support structures, overhead and underground cables (including but not limited to fiber optic cables for communications and data transmission purposes), substations, distribution and interconnection facilities, and associated equipment and appurtenances, and roads, driveways, fences, gates, signage and other security devices, and utility and other improvements, equipment, and facilities servicing or supporting the same. During the Term, Licensee shall comply with all federal, state, county, and municipal laws, ordinances, regulations, and requirements applicable to

Licensee's use of the Premises (collectively, "**Laws**"); provided, however Licensee shall not be responsible for, and Licensor shall retain full responsibility for, any violation of Laws caused by Licensor or by Licensor's affiliates, officers, employees, agents, contractors, or licensees.

(c) Hazardous Materials. Licensee, when using, storing, or delivering of any material defined or regulated as a pollutant, contaminant, solid waste or hazardous or toxic substance, material or waste under any Laws (a "**Hazardous Substance**") on the Land, must advise Licensor in writing of this condition in advance of conducting any work and is responsible for protecting its own employees, those of Licensor, and all its agents from the hazards associated with such Hazardous Substances. Licensee shall furnish written directions, precautions, or training, from the supplier of the material or other acceptable source, for use by all persons who may be subject to the Hazardous Substances. Licensee must comply with all applicable regulations. Licensee shall dispose of any Hazardous Substances in accordance with all applicable regulations. Upon request, Licensee shall provide Licensor with the appropriate generator E.P.A. number if applicable. Licensee shall do all things necessary to ensure that there will be no discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Substances on the Land. Licensee is responsible for any and all costs and liabilities associated with the cleanup of any such spillage or as required by any regulating authority, and shall indemnify, defend, and hold Licensor harmless against any current or future liabilities resulting from such incident. Notwithstanding the foregoing, Licensee shall not be required to cause the remediation of any condition on the Land, nor otherwise have any liability hereunder, that is not caused by or made worse by the actions of Licensee or its agents.

8. **Liens**. During the Term and Move-out Period, defined below in Section 13, Licensee shall exercise best efforts to keep the Premises and its improvements thereon free and clear from liens or claims for work performed, materials furnished, or obligations incurred by Licensee in, on, or about the Premises and access route thereto, and, in the event of any such lien, Licensee take all such steps as are necessary to discharge the lien or bond over it. Licensee shall defend and indemnify Licensor from and against any such liens, except to the extent caused by Licensor's active or gross negligence or willful misconduct.

9. **Prohibited Activities**. As to the Premises, Licensee shall (i) not commit any waste or legal nuisance thereon, (ii) maintain the Premises in a reasonably neat and orderly condition and not accumulate or dispose of trash or debris thereon, (iii) not bring firearms, lead ammunition, dogs or other animals thereon, (iv) repair any damage to the Premises caused by Licensee, its agents, employees, contractors or any other party under the direct control of Licensee, and (v) not destroy, deface, change or remove any survey or boundary line marker or monument or any artifact, rock, plant or animal remains, or permit the same to be done by others who are under the control of, or subject to direction by Licensee.

10. **Licensee's Property**.

(a) The System and its constituent parts, together with any and all improvements or other features constructed on, or personal property installed or placed on the Premises and/or Licensor's adjacent property by or for Licensee, including without limitation, machinery, fixtures, trade fixtures, equipment, racking, inverters, cables, solar panels and other personal property (collectively, "**Licensee's Property**") are personal property within the meaning of Article 9 of the UCC (as defined in Section 46(a)) regardless

of the manner of attachment to the Premises and/or Licensor's adjacent property. Licensee's Property is and shall at all times during the Term be deemed to be the property of Licensee (subject to any Transfer in accordance with Section 30), to be removed at Licensee's expense upon the expiration or earlier termination of the Term in accordance with Section 13. The creation, attachment and perfection of security interests in Licensee's Property shall be governed exclusively by Article 9 of the UCC. For the avoidance of doubt and without limiting the foregoing, Licensor hereby waives any lien, security interest, rights to levy, distraint, possession, landlord's lien and all other claims of any nature that Licensor now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to Licensee's Property, if any, and Licensor shall not cause the creation of, or attachment to, Licensee's Property of any liens (including mechanics' and judgment liens) or other encumbrances. For the avoidance of doubt, Licensor is not responsible for payment of any personal property taxes assessed on Licensee's Property. Licensor further agrees to notify any purchaser of the Land and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing waiver of Licensor's lien rights, which shall be binding upon the executors, administrators, successors and transferees of Licensor, and shall inure to the benefit of the successors and assigns of Licensee and any Additional Notice Party (as defined in Section 30).

(b) The parties hereto acknowledge that the Premises consist of land only and do not include Licensee's Property. Any claim to a lien or encumbrance upon the Premises, arising from any act or omission of Licensor, shall accrue only against the real estate owned by Licensor, and not against Licensee's Property, and shall be subject to this Agreement. If any such lien or encumbrance shall be filed against Licensee's Property as a result of Licensor's actions, Licensor shall, without cost or expense to Licensee, promptly and within a reasonable time cause such lien or encumbrance to be discharged of record by payment, statutory lien release bond, court order or otherwise as provided by law. Licensor shall immediately notify Licensee of, and send Licensee a copy of, any notice Licensor receives claiming that Licensor is late or in default regarding any obligation Licensor has to pay money to any lender or third party holding a mortgage or other lien affecting the Premises.

(c) Without limiting the definition of Licensee's Property set forth in Section 10(a), Licensee's Property shall include, without limitation, all output and products of the System, including, without limitation, the electrical output, the Environmental Attributes, and the Solar Incentives therefrom or associated therewith. The term "**Environmental Attributes**" has the meaning set forth in the SPSA. The term "**Solar Incentives**" has the meaning set forth in the SPSA. Licensee's Property shall also include, without limitation, all insurance and condemnation proceeds (or payments in lieu thereof) in respect of Licensee's Property.

(d) Licensee shall immediately notify Licensor 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.

11. **Utilities; Maintenance.** During the Term, (a) Licensee shall contract in its name for and pay for all public utility services used on the Premises by Licensee, and (b) Licensee shall be responsible for the repair and maintenance of the entire Premises, as well as the cost of installation of any utility improvements necessary for Licensee's use or operation. Licensor shall have no responsibility for any

supply interruptions in power service during the Term of the Agreement, except to the extent caused by Licensor's negligence or willful misconduct.

12. **Alterations and Construction Rights.** Licensee shall provide written notice to Licensor prior to commencing construction of the System. Thereafter, during the Term, Licensee may upon prior written notice to Licensor, at its expense and without the consent of Licensor, remove and/or alter any existing improvements on the Premises, and make any alterations, additions, improvements and changes to the Premises that Licensee deems reasonably necessary in the operation of its business and the Intended Use, including, without limitation, installation of the System, fencing, security devices and/or signage, and excavating, grading, leveling or otherwise modifying the Premises; provided, that such alterations, additions, improvements and changes are made in compliance with applicable Laws and Licensor's site safety and security requirements and have been previously disclosed to Licensor in writing. Licensor shall sign and deliver all applications and other documents, and shall take all such other actions, as are reasonably requested by Licensee in connection with obtaining any re- zonings, variances or other approvals as Licensee shall deem necessary or desirable in connection with Licensee's operations in the Premises, at no cost to Licensor. Licensee's storage and/or staging of any tools, equipment, or materials shall be at Licensee's sole risk. Licensor provides no guaranty or warranty as to safety or security of such items.

13. **Effect of Termination.** Within six (6) months after the expiration or earlier termination of the Term (the "**Move-out Period**"), Licensee shall completely remove all of Licensee's Property and vacate the Premises. Licensee shall be granted a revocable license to access the Land as may be reasonably necessary to allow Licensee to complete the removal of Licensee's Property, subject to the terms and conditions set forth in this Section 13 and Sections 8, 19 and 25, all of which shall survive termination of the Term. The removal of Licensee's Property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Premises to be used for the same purposes existing as of the Effective Date, and Licensee shall leave the Premises free of any conditions created by Licensee which present a current unreasonable risk of harm to Licensor or members of the public. For the avoidance of doubt, Licensee shall have no obligation to restore any improvements demolished and removed from the Premises as permitted under Section 12 and shall not be required to replant any trees or farm crops removed in connection with the construction of the System. This Section 13 shall survive the termination of this Agreement.

14. **Taxes.**

(a) The parties acknowledge that Licensor is a public agency, which does not pay property taxes on the Land. During the Term, if Licensee's use of the Premises results in a change in the taxable status of the Premises. Licensee shall pay such tax liability allocable to the Premises, together with any related interest or penalties, other than interest and/or penalties arising from Licensor's failure to timely provide Licensee with a copy of such Tax Bill (defined below).

(b) Upon Licensee's reasonable request, and at Licensee's sole cost and expense, Licensor shall take such reasonable actions and do such things as are necessary or desirable to facilitate any action

by Licensee to contest any Tax Bill or the assessed value of the property on which they are levied, or to otherwise seek the abatement of Taxes applicable to the Premises, or to seek the separate assessment of the Premises as a distinct tax parcel if the Premises are included within a larger tax parcel. Licensee shall have the right, but not the obligation to pursue any such action.

(c) Notwithstanding anything contained in this Agreement, (1) Licensee shall not be under any obligation to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Licensor or which may be imposed against Licensor or against the Rent payable pursuant to the License or upon the income or profits of Licensor by reason of any law now in force or later enacted, and (2) in the event the Premises are re-assessed for tax purposes because of transfer of ownership of the Land (or any portion thereof) during the Term, Licensee shall pay Licensee's Portion (calculated in accordance with this Section 14(c)) of the Tax Bill, applicable to each tax year or part thereof which falls within the Term. Licensor shall provide Licensee with copies of all invoices, bills and notices (collectively, "**Tax Bills**") regarding all real estate and ad valorem taxes and assessments imposed or levied on the Premises by any applicable government taxing authority (each, a "**Tax**", and collectively, "**Taxes**"), within thirty (30) days of Licensor's receipt of any such Tax Bill. Licensor shall remit payment directly to the taxing authority for the entire amount of any Tax Bill and, within thirty (30) days after Licensor notifies Licensee that such payment has been made, Licensee shall reimburse Licensor for the portion of the Tax Bill allocable to the Premises (such portion, "**Licensee's Portion**"), which portion shall bear the same relationship to the total Tax Bill as the Premises bears to the larger tax parcel. In the event of a delinquency of more than ninety (90) days by Licensor in the payment of any Taxes, after Licensee providing Licensor written notice of such delinquency and Licensor failing to cure such delinquency within thirty (30) days of receipt of Licensee's notice, Licensee shall have the right, but not the obligation, at any time during the Term to pay the entire Tax Bill on Licensor's behalf and deduct any amounts not attributable to Licensee's Portion from future payments of Rent.

(d) Notwithstanding anything contained in this Agreement, in the event the Premises are re-assessed for tax purposes because of transfer of ownership of the Land (or any portion thereof), to any party other than Licensor, during the Term, Licensee shall not be responsible for payment of any increase in taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of the then-existing Licensor.

15. **Fire or Other Casualty.** If during the Term, all or part of the Premises or Licensee's Property are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Licensee's sole and absolute discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Premises and/or Licensee's Property, as applicable, then Licensee may terminate this Agreement and the License created hereby by providing Licensor with written notice of the same and vacating the Premises in compliance with Section 13 hereof. Licensee, or its successor in interest, shall be entitled to 100% of any proceeds from casualty insurance policies maintained by Licensee.

16. **Condemnation.**

(a) If all or part of the Premises and/or Licensee's Property shall be subject to condemnation, the exercise of the power of eminent domain, or other governmental taking (the foregoing, collectively, a "**Taking**") with the result that, in Licensee's sole and absolute discretion, the unaffected portion of the Premises is insufficient or otherwise unsuitable for Licensee's continued use of the Premises for the Intended Use or such other use as existed at the time of the Taking (a "**Total Taking**"), then Licensee may terminate this Agreement by providing Licensors with written notice of the Total Taking, this Agreement shall terminate effective as of the date set forth in such notice, and Licensee shall vacate the Premises in accordance with Section 13.

(b) If a part of the Premises and/or Licensee's Property shall be subject to a Taking that, in Licensee's sole and absolute discretion, does not constitute a Total Taking (a "**Partial Taking**") then (i) concurrently with such Taking this Agreement shall terminate with respect to the affected portion of the Premises, which Licensee shall vacate in accordance with Section 13, (ii) this Agreement shall continue in full force and effect with respect to the unaffected portion of the Premises and (iii) the acreage shall be reduced for each acre (or portion thereof) subject to the Taking. For purposes of clarification only, Licensee shall be entitled to remove Licensee's Property from any portion of the Premises that is subject to a Taking.

(c) Licensee shall have the right but not the obligation to participate in any proceedings with respect to a Taking; in such event Licensors shall cooperate with Licensee to facilitate such participation. Neither Licensors nor Licensee shall enter voluntarily into any binding agreement or settlement related to a Taking without the prior consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) The proceeds of any Taking shall be apportioned as between Licensors and Licensee as follows: Licensors shall receive an amount equal to the fair market value of the Land subject to the Taking and calculated with reference to the value of the Land for its use as of the Effective Date, but not the improvements constructed or placed by Licensee thereon, and Licensee shall receive such amounts as are necessary to compensate Licensee for the loss of use of the Premises affected by the Taking, including any improvements constructed or placed by Licensee on the Land, and the loss or interruption of Licensee's business and the cost of any restoration or repair necessitated by such Taking, including consequential losses. If after giving effect to the foregoing there remain any un-apportioned proceeds, they will be equitably apportioned as between Licensors and Licensee.

17. **Default Termination.** Any termination of this Agreement arising from a Licensee Default, shall not relieve Licensee from the payment of any sum that are due to Licensors hereunder, or any claim for damages, and any such termination shall not prevent Licensors from enforcing payment of any such sums or claims for damages by any remedy provided by law, or from recovering damages from Licensee for any default thereunder. Such damages include the worth at the time of the award of the amount by which the unpaid for balance and the term, after the time of award exceeds the amount of such loss that Licensee proves could be reasonably avoided. In addition, Licensors reserves the remedy described within California Civil Code Section 1951.4 (Licensors may continue this Agreement in effect after Licensee's breach and abandonment and recover Rent as it becomes due, subject only to reasonable limitations). All remedies for Licensors shall be cumulative, and no one of them shall be exclusive of any other. No waiver

by Licensor of a breach of any of the terms, covenants, conditions, or provisions of this Agreement shall be construed as a waiver of any succeeding or preceding breach of the same or any other term, covenant, condition, or provision herein contained.

18. **Default; Remedies.** The failure by a party hereto to perform its obligations under this Agreement, if not remedied within thirty (30) calendar days of written notice of such failure from the other party, or if such failure is not capable of being remedied within thirty (30) days, remedial action is not commenced within such thirty (30) day period and thereafter diligently pursued, shall constitute a default hereunder (a “**Default**”). Following an event of Default, the non-defaulting party may pursue any available remedies at law or in equity including Licensor’s right to declare this Agreement, and all rights and interests created by it, to be terminated and Licensor may recover possession of the Premises. If Licensor is in Default under this Section 18, in addition to other remedies expressly provided herein, Licensee may terminate this Agreement and upon such termination Licensee shall be entitled to receive from Licensor the applicable Early Termination Fee set forth in the SPSA. Upon termination of this Agreement pursuant to this Section 18, Seller will remove the System in accordance with Section 13.

19. **Indemnifications.** Each party agrees to defend (with legal counsel reasonably acceptable to both Parties), indemnify, and hold the other party, its parent, subsidiary, and affiliated companies together with their directors, officers, and employees (collectively the “**Indemnitees**”), harmless from and against any and all liabilities, claims, liens, losses, expenses (including reasonable attorneys’ and experts’ fees) and judgments of every kind and nature whatsoever (“**Liabilities**”) to the extent arising directly out of the acts or omissions of the other party or the acts or omissions or intentional misconduct of the other party and its contractors, subcontractors, affiliates, agents, and employees, except to the extent such Liabilities are directly attributable to the negligence or willful misconduct of the on-indemnifying Party. The indemnifying party agrees to investigate, handle, and defend (with legal counsel reasonably acceptable to non-indemnifying party) any such claim, demand, or suit at its expense and to bear all costs (including reasonable attorney and expert fees and costs) related thereto, except to the extent such damages or claims are directly attributable to the negligence or willful misconduct of the non-indemnifying Party. The indemnifying party shall notify the other party in writing of the filing of any claim, demand, or suit promptly after receiving actual notice of the same. The foregoing indemnity shall survive the termination, cancellation, or expiration of this Agreement.

20. **Licensor’s Right of Entry.** Except in the event of an emergency, for which notice may be given as soon as is reasonably practical, Licensor, and its authorized employees or agents, shall have the right, upon seventy-two (72) hours’ notice to Licensee, and only in the presence of a Licensee representative, to enter upon the Premises or any part thereof for the purpose of inspecting the Premises, posting legally required notices thereon, or complying with any obligation or exercising any right under this Agreement. Notwithstanding the foregoing, Licensor shall not have the right to touch or handle the System or any of its components.

21. **Notices.** All notices, elections, demands, requests, and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and

acknowledgement of receipts or by email transmission, addressed to the party to be served at the address indicated in the Basic Terms Summary or at such other address as may hereafter be designated in writing by either party hereto, or by any other method if actually received. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given or delivered.

22. **Easements.** Subject to the terms of this Section 22, Licensor hereby grants to Licensee during the Term (a) an easement for light, solar energy resources, access (including vehicular and pedestrian ingress and egress) and utility access over, under and across the Land and all other property owned by Licensor which is adjacent to or in the vicinity of the Land as reasonably necessary for Licensee's conduct of the Intended Use on the Premises and to access the Premises, and (b) an easement over, under and across the Land and any of Licensor's adjacent property for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the Intended Use of the Premises. Without limiting the foregoing, Licensor agrees to execute and deliver any separate easement agreements for the benefit of Licensee, the Premises or the utility to which the System is interconnected (the "**Utility**") as Licensee or the Utility may reasonably request to facilitate the construction, operation and removal of the System, or otherwise in connection with Licensee's or the Utility's use of the Premises during the Term (collectively, the "**Easements**"). Licensor and Licensee (and the Utility, as applicable) shall in good faith establish the location and terms of such Easements within thirty-five (35) days of the request therefor, and any such Easements shall be confirmed in writing, signed by the parties and recorded in the County records against the Land and shall run with the License and the Land and inure to the benefit of Licensee (or the Utility, as applicable) and its transferees, successors and assigns hereunder, including any Additional Notice Party. Upon expiration or termination of the Agreement, Licensee shall promptly execute and record a quitclaim or other requested instrument releasing Licensee's interest in the Easements, and shall use commercially reasonable efforts to obtain any required signature from the Utility and Additional Notice Party to quitclaim or release such Easements.

23. **Non-Disturbance Agreement.** Upon Licensee's request, Licensor shall execute, and shall use commercially reasonable efforts to cause any current beneficiaries of any mortgages/deeds of trust, or any other parties with rights in, or interests secured by Licensor's interest in, the Land or any other property owned by Licensor which is subject to an easement benefiting Licensee (collectively, "**Licensor's Land**"), to enter into an agreement with Licensee confirming that such party subordinates its rights or interests in Licensor's Land to this Agreement, or solely with respect to current beneficiaries of any mortgages/deeds of trust or other parties with a security interest in Licensor's Land, that such party will not disturb or extinguish Licensee's interest in Licensor's Land and in this Agreement. Such agreement shall be in form and substance reasonably agreeable to Licensee and any Additional Notice Party (defined in Section 30). If Licensee and Licensor are unable to obtain such agreements from any third party holding an interest in Licensor's Land, Licensee shall be entitled (but not obligated) to make payments or performance in fulfillment of Licensor's obligations to such third party and may offset the amount of such payments or performance from amounts due Licensor under this Agreement; provided, however, that if the Parties execute and record a Memorandum of this Agreement pursuant to Section 28 hereunder, such that this Agreement takes priority over any such mortgage, deed of trust or other interest, the foregoing right of Licensee shall be null and void. Notwithstanding the above, solely with respect to future beneficiaries of any mortgages/deeds of trust or other parties with a security interest in Licensor's Land ("**Holder**"), upon

Licensors written request, Licensee shall execute, acknowledge (as applicable) and deliver to Licensor an agreement subordinating this Agreement and Licensee's interest in Licensor's Land to such mortgages, deed of trusts or other secured interests of such beneficiary, pursuant to which such beneficiary agrees on commercially reasonable terms to, among other things, (i) recognize Licensee's rights under this Agreement and (ii) not disturb Licensee's use and possession of the Premises subject to Licensee's compliance with the terms hereof, in exchange for Licensee's agreement to subordinate this Agreement to the terms of such mortgages, deed of trusts or secured interests and attorn to and recognize such beneficiary as the licensor under this agreement following foreclosure.

24. Licensor's Representations and Warranties.

(a) Licensor hereby represents and warrants to Licensee that: (i) Licensor owns the Land in fee simple, and has all requisite right, power and authority to enter into this Agreement and the License, (ii) the execution of this Agreement and the granting of the License to Licensee will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Licensor is a party or by which the Land or any part thereof is bound; (iii) to the best of Licensor's knowledge no hazardous or toxic substances have been released or manufactured, or are present on the Land in amounts in excess of the lawful limit absent a permit, and no underground storage tanks (whether or not abandoned) exist on or under the Land; (iv) Licensor has not received any notice of any pending or threatened Taking, zoning change or legal, regulatory or other noncompliance relating to the Land, or of any possible widening of the streets abutting the Land; (v) Licensor has not received any notice of proposed curtailment of utility services to the Land; (vi) the Land is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants, and there are no existing liens, mortgages, or deeds of trust encumbering all or any part of the Land; (vii) there are no service or maintenance contracts affecting the Land; (viii) there are no delinquent or outstanding Taxes, liens or other impositions levied or assessed against the Land; (ix) except for the License granted in this Agreement, there are no licenses (other than as set forth in Schedule 24(a)(ix) attached hereto, if any), options to purchase, license agreements or other third party rights to use or possess the Land, whether written or oral, recorded or unrecorded; (x) Licensor is not in the hands of a receiver nor is an application for such a receiver pending, nor has Licensor made an assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy nor is Licensor a defendant in any ongoing or pending litigation proceedings; (xi) if Licensor is a limited partnership, trust, limited liability company, corporation or other business entity, Licensor is in good standing under the laws of the state of its incorporation and the state in which the Land is located, and the undersigned representatives of Licensor have full power and authority to execute and deliver this Agreement; (xii) to the best of Licensor's knowledge, there is no underground septic system or leach field located upon the Land; (xiii) to best of Licensor's knowledge, no person or entity has buried any refuse, construction materials, garbage or any other matter of any kind or nature below the surface of the Land; (xiv) to the best of Licensor's knowledge, no portion of the Land includes any archeological site, burial site, artifact or other condition of archeological, tribal or historical significance; and (xv) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not require consent from a third party, including permits from any governmental authority.

(b) All of Licensor's representations and warranties contained in this Agreement shall be

true as of the Effective Date and shall be subject to any state of facts arising during the duration of this Agreement without the direct or indirect, active or passive, involvement of Licensor. As used herein, Licensor's knowledge, or "actual knowledge" or derivations thereof means to the actual, but not constructive or imputed, knowledge of Jeevan Muhar (the "**Licensor Representative**"), without any independent investigation or inquiry having been made, and the Licensor Representative shall have no personal liability hereunder.

(c) Licensor makes no representations or warranties regarding the suitability of the Premises for the System, including, but not limited to, ground water recharge or extraction, the frequency of natural flooding, if any, and Licensee is solely responsible to conduct any necessary investigation regarding the Premises in order to determine the suitability of the Premises for the System. Licensor is explicitly permitted to use the area within the Premises for groundwater extraction and recharge operations. Recharge meaning intentional flooding of the Premises located within the recharge basins not to exceed a water depth of three feet as measured from grade to the top of the water level.

(d) To Licensor's actual knowledge, Licensor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Licensee's financing party's security interest therein, other than those for property taxes, the water storage district, other liens standard in Kern County, California.

(e) To Licensor's actual knowledge, Licensor has identified and disclosed to Licensee all environmental documents, reports, studies, data or other information relating to the Premises with Licensor's possession or control.

(f) Licensor has no actual knowledge the Premises is not in compliance with environmental laws.

(g) To Licensor's actual knowledge, Licensor has delivered to Licensee all material reports and information concerning the presence or release of hazardous materials on, in or under the Premises in Licensor's immediate control and custody. Licensor hereby agrees to furnish such other documents in Licensor's possession or control with respect to the Premises for compliance with (i) required approvals from state, federal and local authorities and (ii) applicable environmental or hazardous substances laws as may be reasonably requested by Licensee from time to time.

25. Licensee's Representations and Warranties.

(a) Licensee hereby represents and warrants to Licensor that: (i) Licensee has all requisite right, power and authority to enter into this Agreement and the License, (ii) the execution of this Agreement and the granting of the License to Licensee will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Licensee is a party; (iii) Licensee is not in the hands of a receiver nor is an application for such a receiver pending, nor has Licensee made an assignment for the benefit of creditors, nor filed, or had filed against it, any

petition in bankruptcy nor is Licensee a defendant in any ongoing or pending litigation proceedings; and (iv) if Licensee is a limited partnership, trust, limited liability company, corporation or other business entity, Licensee is in good standing under the laws of the state of its incorporation and the state in which the Land is located, and the undersigned representatives of Licensee have full power and authority to execute and deliver this Agreement.

(b) All of Licensee's representations and warranties contained in this Agreement shall be true as of the Effective Date and shall be subject to any state of facts arising during the duration of this Agreement without the direct or indirect, active or passive, involvement of Licensee.

26. **Insurance; Waiver of Claims/Subrogation.** During the Term and Move Out Period, Licensee shall maintain, or cause to be maintained, insurance on the terms set forth below, at Licensee's cost and expense:

(a) Commercial general liability insurance covering Licensee and System operations, written on "occurrence" policy forms (Occurrence Form CG 00 01), including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, and personal injury, with no exclusions for explosion, collapse and underground perils, or fire (including wild fire), with coverage limits of no less than \$2,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence, a \$4,000,000 general aggregate, and a products and completed operations liability aggregate limit of not less than \$2,000,000. The commercial general liability policy shall also include a severability of interest clause with no exclusions or limitations on cross liability.

(b) Automobile liability insurance covering Licensee, including coverage for owned, leased, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. To the extent Licensee does not own any automobiles, contingent liability for hired, leased and non-owned automobiles may be obtained through endorsement to the general liability policy required in Section 26(a) above.

(c) Workers' compensation insurance in accordance with statutory requirements at any time in which Licensee has employees, including coverage for employer's liability with a limit of not less than \$1,000,000 and such other forms of insurance which Licensee is required by applicable law to provide for loss resulting from injury, sickness, disability or death of each of their employees.

(d) Pollution liability insurance with limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 policy aggregate. In addition, the Licensor shall be included as additional insureds under the pollution liability insurance.

(e) Umbrella or excess liability insurance with limits of not less than \$5,000,000 per occurrence and annual aggregate (inclusive of the coverage requirements and limits in Sections 26(a), (b), (c) and (d)) covering Licensee and System operations, and with a term concurrent with that of the

commercial general liability insurance and automobile liability insurance required in Sections 26(a) and (b) above.

(f) All liability policies required in Sections 26(a), (b), (d), and (e) above that are maintained by Licensee or on behalf of Licensee shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) shall operate in the same manner as if there were a separate policy covering each such insured and shall not contain an exclusion for cross liability.

(g) Licensor shall be included as additional insureds (at least as broad as ISO Form CG 20 10 10 01 or CG 20 11) under the commercial general liability insurance and umbrella/follow form excess insurance required above .

(h) All insurance policies must be issued by insurance carriers that are currently rated by Best Rating Services as A-/VII or better and licensed to conduct business in California.

(i) All insurance maintained by Licensee shall be primary, at least as broad as ISO CG 20 01 04 13 as respects to Licensor, its directors, officers, and employees.

(j) All insurance shall provide a thirty (30) calendar day notice of cancellation for non-renewal, ten (10) calendar days for nonpayment of premium. Lessee shall deliver renewal certificates of insurance and, if requested by Lessor, copies of renewal insurance policies, with evidence that the renewal premiums therefor have been fully paid, at least ten (10) calendar days prior to expiration of the then policy period.

(k) Insurance coverage limits required in this Agreement in no way serve as a limitation of Licensee's insurance carrier(s)' legal liability.

(l) Upon Licensor's request, Licensee will promptly furnish Licensor with certificates of insurance evidencing the insurance required to be maintained under this Section 26.

27. Licensor Covenants. From and after the Effective Date until the expiration or earlier termination of this Agreement:

(a) Licensor shall not, without the prior written consent of Licensee, which will not be unreasonably withheld, (i) institute or consent to any rezoning of the Land; (ii) to the extent interfering with Licensee's rights and benefits under this Agreement, further encumber or suffer to exist the further encumbrance or Transfer of the Premises (except as caused by or on behalf of Licensee) except in accordance with Section 29 of this Agreement or in the ordinary course of Licensor's business and operations; (iii) grant any option, leasehold, easement or any right of any kind, or cause or permit any activities or conditions, that would interfere with Licensee's rights hereunder or impair operation of the System (including, without limitation, by erecting or permitting to be erected any cell towers, water towers,

billboards, silos, trees or any other natural or man-made structures to be placed, constructed, or to otherwise exist on any property owned or controlled by Licensor that may diminish the quantity of sunlight that otherwise would reach the Premises or that may cause shade or shadows upon the Premises or any portion thereof, and Licensor shall not emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Premises, or burn or permit the burning of garbage, plant, shrub, and yard trimmings or other vegetation that could adversely affect insolation levels on the Premises), and, upon written notice from Licensee; (iv) knowingly cause or permit the violation of any laws, rules, regulations or ordinances applicable to the Premises; or (v) commence (or have commenced against it) any voluntary or involuntarily proceedings in bankruptcy, insolvency or similar proceedings with respect to Licensor. Licensor shall promptly give Licensee a copy of any notice of any kind received by Licensor regarding the Premises or any Taxes.

(b) Licensor shall comply with and perform all of its covenants, agreements and obligations to third parties, including, but not limited to, payment of government property taxes and assessments (to the extent required under this Agreement), and payment and performance of any mortgage or other financing obligations owed to lenders, which affect or relate to the Land.

(c) Licensor shall not knowingly permit the discharge of (and shall not itself discharge) any hazardous or toxic substances or materials on the Land or any property of Licensor adjacent to or in the vicinity of the Land.

28. **Memorandum of Agreement.** This Agreement shall not be recorded; however, within five (5) days following Licensee's request, Licensor and Licensee shall execute a memorandum of this Agreement in recordable form, setting forth the following provisions of this Agreement, including, without limitation: (a) all information required by law, (b) restrictions on Transfers, (c) rights of first offer or of first refusal of Licensee with respect to the Land, (d) the easement rights granted to Licensee hereunder, and (e) such other provisions of this Agreement as the parties may mutually agree to incorporate therein. Licensee shall cause the memorandum of this Agreement to be recorded in the County records against the Premises. Upon expiration or termination of the Agreement, Licensee shall promptly execute and record a quitclaim or other requested instrument releasing Licensee's interest set forth pursuant to the Memorandum.

29. **Assignments; Transfers.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns, subject to the following terms and conditions:

(a) Licensee may assign this Agreement, in whole or in part, or, during the Term, sublet the Premises, or any part thereof, with Licensor's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If Licensee assigns its entire interest in this Agreement to a party that expressly assumes in writing all obligations of Licensee under this Agreement arising after the effective date of the assignment, Licensee shall be released or discharged from all of its covenants and obligations under this Agreement, except such obligations as shall have accrued prior to the effective date of any such assignment or transfer, and Licensor agrees to look solely to Licensee's assignee for performance of such obligations. For the avoidance of doubt, neither the transfer of some or all of the membership interests by

Licensee's parent company to a third-party purchaser, nor any Transfer pursuant to Section 30, shall be considered an assignment requiring Licensor's prior written consent.

(b) Licensor shall give Licensee at least thirty (30) days' prior notice of any Transfer by Licensor of its interest in the Premises or in this Agreement. In addition, any such Transfer shall be expressly subject to this Agreement, and Licensor shall not transfer the fee interest in the Premises unless the assignee assumes all of Licensor's obligations under this Agreement and the License, any easements granted to Licensee (as applicable) and any consents granted to Licensee's lenders. Licensor shall notify Licensee of the closing of such Transfer, and if applicable, the name and contact information of the successor to Licensor's interest hereunder and payment instructions for future payments of amounts due under this Agreement.

30. **Third Party Protections.** Licensee may pledge, sell, grant and/or assign, sublicense, mortgage and otherwise transfer (each, a "**Transfer**") this Agreement or Licensee's license of the Premises, in whole or in part, without Licensor's prior consent, in connection with the financing or re-financing of Licensee's Property, subject to Licensee delivering prior written notice of such Transfer to Licensor. If Licensee shall notify Licensor in writing of the existence of, and contact information for, any third party (including, without limitation, any tax-credit equity providers) providing debt, equity or other financing (including, but not limited to, tax equity or sale-leaseback or similar financing) to or for the benefit of Licensee, directly or indirectly, whether secured or unsecured (and if secured, whether via a collateral Transfer, mortgage, deed of trust, or otherwise) (any such third party, an "**Additional Notice Party**"), then the following provisions shall apply until such time as Licensor shall receive written confirmation that such Additional Notice Party's interests in this Agreement, the System or the Premises are released:

(a) Without limiting Section 29(a), no assignment, amendment, election to terminate or other modification of this Agreement by Licensee shall be effective unless approved by the Additional Notice Party in writing. In the event Licensee acquires fee ownership of the Premises, or in the event of Licensee's voluntary surrender of the license estate, there shall be no merger of the license estate created by this Agreement with the fee without the prior written consent of the Additional Notice Party, which consent may be granted, conditioned or withheld in the Additional Notice Party's sole and absolute discretion.

(b) If any event of Default by Licensee remains uncured following the applicable cure period under Section 19, Licensor shall send written notice of such uncured Default to each Additional Notice Party at the address provided therefor, whereupon the Additional Notice Party shall have an additional thirty (30) days during which it may, in its sole and absolute discretion, cure such Default on Licensee's behalf. Licensor may not pursue any remedy for such Default unless it remains uncured following the expiration of such Additional Notice Party's thirty (30) day cure period. Notwithstanding the foregoing, the aforesaid thirty (30) day cure period shall be extended for the time reasonably required to complete any such cure (not to exceed 180 days), including the time required for any Additional Notice Party to perfect its right to cure any non-monetary default by obtaining possession of the Premises (including possession by a receiver), provided such Additional Notice Party acts with reasonable and continuous diligence.

(c) Neither the bankruptcy nor the insolvency of Licensee shall be grounds for terminating this Agreement; provided the Agreement is affirmed by the bankruptcy court trustee and as long as the Rent and all other obligations of Licensee hereunder are paid or performed by or on behalf of Licensee or the Additional Notice Party in accordance with the terms of this Agreement subject to and within any cure period.

(d) If this Agreement is terminated pursuant to a Licensee Default, including, but not limited to, any Default not cured by an Additional Notice Party within the cure period allowed therefor, or if this Agreement is terminated pursuant to a rejection or disaffirmance in bankruptcy or other similar proceeding with respect to Licensor or Licensee, then Licensor, or its successor in interest to the Land, if any, shall enter into a new license with the Additional Notice Party or its nominee (a “**Successor Licensee**”) on the same terms as set forth herein, and for a term equal to the then-unelapsed portion of the Term of this Agreement. From the effective date of the termination, rejection or disaffirmance of this Agreement, to the date of execution and delivery of the new license, Successor Licensee may use and enjoy the Premises and any easements granted hereunder without hindrance by Licensor or any party claiming by, through, or under Licensor. Such new license shall be effective as of the date of termination, rejection or disaffirmance of this Agreement and shall have the same priority as this Agreement. If more than one Additional Notice Party makes a request for a new license pursuant hereto, then unless all such Additional Notice Parties direct otherwise, the new license shall be delivered to the Additional Notice Party whose contact information was sent to Licensor (in accordance with the introduction to this Section 30) earliest in time. This Section will survive any termination, rejection or disaffirmance of this Agreement, as described above.

(e) An Additional Notice Party shall have the right, subject to the terms and conditions of this Agreement: (1) to assign its security interest; (2) to enforce its lien and acquire title to the licensed estate by any lawful means; (3) to take possession of and operate the Licensee’s Property, the licensed estate or any portion thereof and to perform all obligations to be performed by Licensee hereunder, or to cause a receiver to be appointed to do so; and (4) to acquire the licensed estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the licensed estate to a third party. Licensor’s consent shall not be required for the acquisition of the encumbered licensed estate or sublicensed estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure, subject to prompt written prior notice from Licensee to Licensor prior to such event. During any period of possession of the Premises by an Additional Notice Party (or a receiver requested by such Additional Notice Party) and/or during the pendency of any foreclosure proceedings instituted by an Additional Notice Party, the Additional Notice Party shall pay or cause to be paid all other monetary charges payable by Licensee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Licensee’s licensed estate by the Additional Notice Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale and subject to the provisions of this Section 30(e), this Agreement and the License created hereby shall continue in full force and effect and the Additional Notice Party or party acquiring title to Licensee’s license estate shall, within 30 days, commence the cure of all defaults hereunder, to the extent reasonably susceptible to cure, and thereafter diligently process such cure

to completion.

(f) Without limiting the terms of Section 10 above, Licensor recognizes and acknowledges that any claim or claims that an Additional Notice Party has or may have against Licensee's Property are superior to any lien, security interest, or claim of any nature that Licensor now has or may hereafter have in and to Licensee's Property by statute, rule, regulation, common law, agreement or otherwise. Licensor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent an Additional Notice Party from the Premises for the purpose of inspecting the System, Licensee's Property and the Premises; provided Licensee promptly provides Licensor prior written notice of such event.

(g) Licensor agrees to execute and deliver such documents and instruments, including, without limitation, an amendment to this Agreement, an amendment to any recorded memorandum of this Agreement or a subordination agreement, as may be reasonably requested by an Additional Notice Party or in furtherance of a Transfer related to the financing or re-financing of the System, to allow such Additional Notice Party reasonable means to protect or preserve the System or its collateral interest in this Agreement and the License created hereby; provided, that Licensor shall not be required to amend this Agreement in any way that would alter the Term, decrease the Rent or otherwise in any material respect adversely affect the economic benefits to which Licensor is entitled under this Agreement. Each party shall bear its own expenses, including legal expenses, in connection with any request for the execution and delivery of additional documents and instruments in accordance with this Section 30(g).

31. **Estoppel.** Upon the request of either party (or any Additional Notice Party), the non-requesting party shall deliver to the requesting party a certificate setting forth the material terms of this Agreement, the existence of any Default under this Agreement, the date through which Rent has been paid and any amounts on deposit with Licensor, the current Rent rate, and such other reasonable terms requested by the requesting party. The failure by the non-requesting party to respond to such request within ten (10) days shall constitute an event of Default, and in addition, shall result in the deemed acceptance, approval and confirmation of the truth of the matters set forth in the certificate sent with the original request.

32. **Brokerage Commission.** Except as pursuant to a separate agreement between Licensee and Licensee's broker, if any, Licensor and Licensee each represent and warrant to the other that they have not dealt with any real estate agent or broker in connection with this transaction. Licensor and Licensee each hereby indemnify and save the other harmless for, from and against all losses, costs and expenses incurred by reason of a breach of such representation and warranty.

33. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state in which the Land is located, and any disputes arising from or relating to this Agreement shall be construed, governed and interpreted and regulated under the laws of such state.

34. **Interpretation; Amendment.** The terms of this Agreement shall not be amended, restated, changed or otherwise modified except in a writing signed by Licensor, Licensee and any Additional Notice

Party. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

35. **Integration; Anti-Merger.** This instrument, including the attached Exhibits, contains the complete agreement of the parties regarding the subject matter of this Agreement, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of licensor and licensee between the parties as to the Premises; and nothing in this Agreement shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Agreement. This Agreement shall continue until the expiration or termination of the Agreement and Term, and shall not be extinguished by operation of law pursuant to the acquisition by a single party of the interests in both Licensee and Licensor hereunder.

36. **Exclusive Control; Quiet Enjoyment.** Throughout the Term, Licensee shall have exclusive control, possession, occupancy, use and management of the Premises, and Licensor shall warrant and defend Licensee's right to quietly hold and enjoy the Premises other than Licensor's ongoing use of the Premises for ground water recharge and extraction as further described below. Licensee, and its agents, guests, sublicensees and designees, and any Additional Notice Party, shall have access to the Premises at all times during the Term, and neither Licensor nor any agent of Licensor shall, without a Licensee representative, enter upon any portion of the Premises except as specifically permitted hereunder. For the avoidance of doubt, this Agreement does not convey any subsurface oil, gas, mineral, liquid, or other subsurface rights (collectively, "**Mineral Rights**") or any subsurface, surface water rights no matter its source or rights or interest to such water, (riparian, appropriative or otherwise) ("**Water Rights**") to Licensee; provided, however, that Licensor shall not engage in, and shall not permit, any Mineral Rights or Water Rights activity, including, without limitation, the extraction of minerals, oil, gas, liquid, or other substances, if such activity could result, in Licensee's sole and absolute discretion, in a failure of subsurface support for the Premises or otherwise impair or adversely affect Licensee's Property or Licensee's use of the Premises. The foregoing sentence shall be a covenant running with the Land binding upon any party owning any interest in, or having rights to develop or use such Mineral Rights. Licensor is explicitly permitted to use the facility on an ongoing basis for ground water extraction and recharge up to a depth of 36" in the license area of the Premises This extraction and recharge shall not impact Licensee's operations.

37. **Waiver.** The waiver by any party of any instance of a breach of any covenant or agreement herein shall not be deemed to constitute waiver of any subsequent breach of the same or any other covenant or agreement under this Agreement.

38. **Nonrecourse.** The parties' obligations under this Agreement (including any actual or alleged Default by a party) do not constitute personal obligations of the individual partners, members, managers, directors, officers, affiliates or shareholders of either party, and neither party shall seek recourse against the individual partners, members, managers, directors, officers, affiliates or shareholders of the other party, or any of its or their personal assets, for the satisfaction of any liability with respect to this Agreement.

39. **Consents; Further Assurances.** Each party shall execute and deliver such further documents and perform such other acts, as may be reasonably necessary to achieve the parties' intent in entering into this Agreement. The parties further agree that, to the extent the consent or approval of either of them is required, requested or appropriate under this Agreement, such consent or approval shall not be unreasonably or unduly withheld, delayed, or conditioned, and except as may otherwise be expressly provided for herein, each party shall bear its own costs and expenses, including legal costs, in connection with such consent or approval.

40. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile were an original thereof.

41. **Survival.** Upon the expiration or earlier termination of this Agreement in accordance with its terms, this Agreement shall cease to have force and effect, unless the context requires otherwise to achieve the parties' intent with respect thereto.

42. **Confidentiality.** The Parties to this Agreement agrees to hold all information of the other party, including, without limitation, the terms of this Agreement, in strict confidence, and will not disclose the same to any person, other than as required by applicable law, rule, or regulation. The Parties acknowledges and stipulate that each party may suffer irreparable harm in the event of a breach of this confidentiality agreement, for which no adequate remedy at law exists. Therefore, in addition to all other remedies available pursuant to the terms of this Agreement or at law, the Parties shall have the right to obtain immediate injunctive or other equitable relief upon a breach of this confidentiality agreement, without the necessity of giving any notice of such default or opportunity to cure the same.

43. **Attorneys' Fees.** In the event of any dispute under this Agreement, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

44. **Tax Credits.** If under applicable law the holder of a licensed interest in the nature of that held by Licensee or Licensee's assignee becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Licensee's option, Licensor and Licensee shall amend this Agreement or replace it with a different instrument so as to convert Licensee's interest in the Premises to a substantially similar interest that makes Licensee eligible for such tax credit, benefit or incentive.

45. **Marketing.** During the Term, Licensor gives and grants to Licensee and Licensee's affiliates, and each of their respective licensees, agents, representatives, employees, successors and assigns (collectively, the "**Licensed Parties**"), the right and license to photograph, publish and use photographs (whether still or moving) of the Premises in all media and types of advertising and promotion by the Licensed Parties, subject to Licensor's prior written approval, in its sole and absolute discretion, but in no

event shall Licensee have the right to use Licensor's intellectual property (copyrights or trademark property) at any time. Licensor agrees that all images of the Premises used and taken by the Licensed Parties are owned by the Licensed Parties and that the Licensed Parties may obtain copyright in material containing same. If Licensor should receive any print, negative or other copy thereof, Licensor shall not authorize its use by anyone else. Licensor agrees that no advertisement, promotion or other material utilizing or containing the Land need be submitted to Licensor for approval and the Licensed Parties shall be without liability to Licensor for any distortion or illusionary effect resulting from the publication of the Premises. Licensor represents and warrants that the license granted hereunder (a) does not and will not violate or infringe upon the rights of any third party and entity, and (b) does not in any way conflict with any existing commitment on Licensor's part. Nothing herein shall constitute any obligation on the Licensed Parties to make use of any of the rights set forth in this Section 45.

46. **State Specific Provisions.** In the event of any inconsistencies between the terms and conditions of this Section 46 and the other terms and conditions of this Agreement, the terms and conditions of this Section 46 shall control and be binding:

(a) As used in this Agreement, "UCC" shall mean Uniform Commercial Code as in effect in the State of California or any replacement or successor statute or code.

(b) The following additional language is included in Section 22: "Licensor hereby grants and conveys to Licensee an exclusive easement on, over and across the Land for direct sunlight to any solar panels on the Premises and an exclusive easement prohibiting any obstruction of direct sunlight (collectively, the "**Solar Easement**") throughout the entire Land to and for the benefit of the area existing horizontally 360° from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "**Site**") and for a distance from each Site to the boundaries of the Land, together vertically through all space located above the surface of the Land, that is 180° or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Land through each Site to each point and on and along such line to the opposite exterior boundary of the Land." Licensor may construct power poles in the future inside the Premises.

(c) All persons having any ownership interest in the Land (including, without limitation, spouses, life estates, and interests under an installment sale contract) have signed this Agreement. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to this Agreement and the licensed interest, easements and other rights granted hereby.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the later of the dates indicated below.

LICENSOR:

ARVIN-EDISON WATER STORAGE DISTRICT
a California public agency

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

[REDACTED], LLC
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

The parcel of real property located in Kern County (the “**County**”), California, with APN [REDACTED].

EXHIBIT B
LEGAL DESCRIPTION OF THE PREMISES

An exact legal description is to be attached when the Premises is identified.

SCHEDULE 1

BASIC TERMS SUMMARY

Effective Date	The date that the Agreement been executed by both Licensor and Licensee
Licensor	Arvin-Edison Water Storage District, a California public water agency
Licensee	[REDACTED], LLC, a Delaware limited liability company
Land	Up to [●] acres plus or minus on the following parcels APN [REDACTED] in the County of Kern in the area shown in Exhibit A to the Agreement.
Premises (Section 2)	An approximately [●] acre portion, plus or minus, of the Land, as legally described on Exhibit B.
License Commencement Date (Section 4)	The Effective Date
Operations Date	The date upon which the System begins generating electrical energy in amounts greater than test quantities.
Term (Section 4)	The date beginning on the License Commencement Date and ending 30 years after the Operations Date.
Rent (Section 6)	\$10 due on the Effective Date
Rent Escalation Date (Section 6)	None
Rent Escalation Percentage (Section 6)	0.0%
Licensor's Notice Address (Section 21)	Arvin-Edison Water Storage District PO Box 175 Arvin, CA 93203
Licensee's Notice Address (Section 21)	[REDACTED], LLC c/o: White Pine Development, LLC 1808 Wedemeyer Street, Suite 221 San Francisco, CA 94129 Phone: Email: