Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date the Agreement is fully executed by both Parties (the "**Effective Date**").

Client:	**City of Santa Rosa Elementary School District ("Elementary District") and Santa Rosa High School District ("High School District")**	**Service Provider:**	**Ridgway Ave DG Solar, LLC**
Contact Name and Address:	211 Ridgway Avenue Santa Rosa, CA 95401 Attn: Superintendent atrunnell@srcs.k12.ca.us	**Contact Name and Address:**	1902 Wright Pl, Ste 200 c/o Jua Capital LLC Carlsbad, CA 92008 Attn: Abinash Tiwari
Phone:	(707) 890 – 3800	**Phone:**	(240) 354-7627
E-mail:	atrunnell@srcs.k12.ca.us	**E-mail:**	abinash.tiwari@juacap.com
Premises: Address and Ownership	Client [x] owns [_] leases the Premises.	**Additional Service Provider Information:**	For all billing related requests, please contact Abinash Tiwari at: (240) 354-7627

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel systems more particularly described in **Exhibit 2** (each referred to herein individually as a "**System,**" and all "Systems" described in **Exhibit 2** (as may be modified in accordance with the terms and conditions of this Agreement) shall be referred to herein collectively as "**All Systems**") and installed at the Client's facilities described in **Exhibit 2** (each referred to herein individually as a "**Facility**" and collectively, as may be modified in accordance with the terms and conditions of this Agreement, as "**All Facilities**").

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

- **Exhibit 1** Basic Terms and Conditions
- **Exhibit 2** System Description
- **Exhibit 3** General Terms and Conditions
- **Exhibit 4** Form of Easement Agreement
- **Exhibit 5** Form of Performance Guarantee
- **Exhibit 6** Project Stabilization Agreement

Client: City of Santa Rosa Elementary School District, and Santa Rosa High School District	**Service Provider: Ridgway Ave DG Solar, LLC**
Signature: ______________________ Printed Name: ______________________ Title: ______________________	Signature: ______________________ Printed Name: ______________________ Title: Authorized Signatory

Date: ____________________	Date: ____________________

Exhibit 1
Basic Terms and Conditions

1. **Initial Term:** Twenty-five (25) years, beginning on the Commercial Operation Date.

2. **Additional Term:** Up to three (3) Additional Terms of five (5) years each, upon mutual agreement of the Parties.

3. **Environmental Incentives and Environment Attributes:** Accrue to Service Provider.

4. **Contract Price:** $0.2147 / kWh in year one of the Term, subject to a one percent (1.00%) per annum escalation in each subsequent Contract Year of the Term and the Additional Term, if applicable.

5. **Upfront Payment:** Zero dollars ($0) paid upon achievement of the Commercial Operation Date.

6. **Condition Satisfaction Date:** September 30, 2024 (subject to extension for force majeure and similar circumstances beyond Service Provider's control, including failure of applicable governmental entities or utilities to issue any required permits or authorizations timely or failure by Client to perform its obligations hereunder) (the "**Condition Satisfaction Date**").

7. **Anticipated Commercial Operation Date: December 31, 2024**.

8. **Installation:**

Includes:	[x] Design, engineering, permitting, installation, monitoring, maintenance, operation, rebate application and paperwork processing of All Systems. The installation includes tree removal and trimming. All costs associated with compliance with the District's Project Stabilization Agreement, attached and incorporated as **Exhibit 6** (the "Project Stabilization Agreement").
Excludes:	Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles) that could not have been discovered upon a reasonably prudent visual inspection. The effects of unforeseen site conditions, are addressed in Sections 7(c) and 7(l) of Exhibit 3 of this Agreement. Upgrades or repair to the Facility, roof or utility electrical infrastructure.

9. **Substitute Buyer:** This Agreement is being entered into on a take or pay basis. Client shall purchase from Service Provider, and Service Provider shall sell to Client, all of the electric energy generated by each System during the Initial Term and any Additional Term.

10. **Purchase Option Price:**

End of Contract Year	Purchase Option Price
6	$16,050,493.03
10	$12,671,442.00
15	$8,447,628.92
20	$4,685,756.19

Exhibit 2
Systems Description

1. **System Locations:** sites owned by Santa Rosa City Schools as more fully described below.

2. **Expected First Year Energy Production (kWh):** 6,101,482 kWh/ year (estimated).

3. **Expected Structure:** [_] Ground Mount [X] Roof Mount [X] Parking and Shade Structure [_] Other

4. **Facilities and Systems Layout:** See **Exhibit 2, Attachment A**.

5. **Utility:** Pacific Gas & Electric.

Exhibit 2
Attachment A:
Facilities and Systems Layout

An Aerial Photograph of each Facility	See below
Conceptual Drawing of each System	See below
Delivery Points	To be confirmed upon Commercial Operation
Access Points	To be confirmed upon Commercial Operation

Preliminary Site Plan: Please find the preliminary site plan on the next page. This preliminary site plan will be finalized after the execution of this Agreement; provided that the final design for each System is subject to obtaining the relevant approvals from applicable authorities, which may or may not be obtained, and Client's approval of the design not to be unreasonably withheld. Service Provider shall work with Client to maximize the size of each System. Current anticipated size of the portfolio is approximately 4,503 kWdc. The system sizes in kWdc included here are expected sizes based on preliminary layouts.

<u>Exhibit 3</u>
Solar Power Purchase Agreement
General Terms and Conditions

1. **<u>Definitions and Interpretation</u>.** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **<u>Purchase and Sale of Electricity</u>.** Beginning on the date that any individual System at any Client-owned site is providing electricity that can be legally sold to Client, Client shall purchase from Service Provider, and Service Provider shall sell to Client, all of the electric energy generated by each System prior to and during the Initial Term and any Additional Term (as defined in **<u>Exhibit 1</u>**, and collectively the "**Term**"). Electric energy generated by each System will be delivered to Client at the relevant delivery point identified on **<u>Exhibit 2</u>** (each, a "**Delivery Point**") and shall be delivered at Alternating Current ("**AC**"). Client shall take title to the electric energy generated by each System at the relevant Delivery Point, and risk of loss will pass from Service Provider to Client at each such Delivery Point. Client may purchase electric energy for any Facility from other sources if the Client's electric requirements at such Facility exceed the output of the relevant System. Any purchase, sale and/or delivery of electric energy generated by a System prior to the Commercial Operation Date shall be permitted for such System after such System is mechanically complete and capable of providing electric energy to the relevant Delivery Point, and any approval or authorization (or, if applicable, interconnection agreement) from the Utility (as defined below) has been obtained ("**Commercial Operation**").

3. **<u>Term and Termination</u>.**

   a. **<u>Initial Term</u>.** The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **<u>Exhibit 1</u>,** unless earlier terminated as provided for in this Agreement. The "**Commercial Operation Date**" will be the date specified in a written notice from Service Provider to Client, in which notice Service Provider confirms that All Systems are mechanically complete and capable of providing electric energy to each Delivery Point, and any approval or authorization (or, if applicable, interconnection agreement) from the entity authorized and required under applicable law to provide electric distribution service to Client at the relevant Facility specified in item 5 of **<u>Exhibit 2</u>** (the "**Utility**") has been obtained. In case Service Provider is unable to complete any individual System despite its commercially reasonable efforts, Client shall agree to amend this agreement to remove any such individual System from **<u>Exhibit 2</u>**. Upon Client's request, Service Provider will give Client copies of certificates of completion or similar documentation from Service Provider's contractor and the approval or authorization (or, if applicable, interconnection agreement) from the Utility. This Agreement is effective as of the Effective Date and Client's obligations to make payments that otherwise would have been due under this Agreement shall not be excused by Client preventing Service Provider from completing installation of any System.

   b. **<u>Additional Terms</u>.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, Service Provider may give Client written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **<u>Exhibit 1</u>** (each such additional period, an "**Additional Term**"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term. Provided that the Parties mutually agree, the Additional Term shall begin immediately upon the conclusion of the Initial Term or any Additional Term on the same terms and conditions as set forth in this Agreement.

4. **<u>Billing and Payment</u>.**

   a. **<u>Upfront Payment</u>.** Within five (5) business days following the achievement of the Commercial Operation Date, Client will make a completion payment to Service Provider an amount equal to zero dollars ($0).

   b. **<u>Monthly Charges</u>.** Client shall pay Service Provider monthly for the electric energy generated by each individual System and delivered to the relevant Delivery Point at the $/kWh rate shown in **<u>Exhibit 1</u>** (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable $/kWh rate multiplied by the number of kWh of

energy generated during the applicable month, as measured by each System's meter. Client shall also pay Service Provider, at the Contract Price, for the energy that a System was capable of generating and would have provided but for any alteration of the relevant Facility as contemplated by Section 8(d), any Scheduled Outage as contemplated by Section 8(e), any relocation of such Facility as contemplated by Section 10(b) or other acts or omissions of Client that prevent the generation or delivery of energy as contemplated by this Agreement and that are not permitted to be taken by Client under this Agreement. Such sum shall not include deviations in energy generation based on weather.

c. **Monthly Invoices.** Service Provider shall invoice Client monthly, either manually or through the Automated Clearing House system ("**ACH**"). For the first month after the Commercial Operation Date or after the commencement of the sale of test energy, whichever comes first, Service Provider shall bill at the end of that calendar month, irrespective of the number of days after the Commercial Operation Date. Such monthly invoices shall state (i) the amount of electric energy produced by any System and delivered to the relevant Delivery Point, and if any of the events contemplated in Sections 8(d), 8(e) or 10(a) have occurred, the reasonably estimated amount (on the basis of the methodology described in Section 10(b)) of electric energy that any System was capable of generating and would have provided as contemplated in Section 4(b) above, (ii) the rates applicable to, and charges incurred by, Client under this Agreement, and (iii) the total amount due from Client. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar ($25) handling charge will be added to each invoice.

d. **Taxes.** Client shall either pay or reimburse Service Provider for any and all taxes assessed on delivery or consumption of electric energy produced by any System from and after the relevant Delivery Point. Any income taxes or similar taxes imposed on Service Provider's revenues due to the sale of energy under this Agreement, which shall be Service Provider's responsibility.

e. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of one percent (1.0%) over the prime rate (but not to exceed the maximum rate permitted by law).

f. **No Set-Offs.** Any and all payments hereunder shall be made without set-off, withholding or deductions of any kind.

g. **Disputed Amounts.** Within fifteen (15) days after receipt of any invoice, Client may provide written notice to Service Provider of any alleged error therein. Client shall timely pay all amounts not disputed in good faith, including the undisputed portion of any invoice. If Service Provider notifies Client in writing within fifteen (15) days of receipt of such notice that Service Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Client's response for the purpose of attempting to resolve the dispute. If the Parties fail to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be resolved pursuant to Article 21(b). Any amounts disputed hereunder shall be withheld pending resolution of such dispute.

5. Environmental Attributes and Environmental Incentives.

a. **Ownership.** Unless otherwise specified on **Exhibit 1**, Service Provider is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Client's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of any System, all of which shall be retained by Service Provider. Client shall reasonably cooperate with Service Provider in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by not using the electrical energy generated by any System to heat a swimming pool. Client shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Service Provider. If any Environmental Incentives are paid directly to Client during the term of this Agreement, Client shall immediately pay such amounts over to Service Provider.

b. **Definition of Environmental Attributes.** "**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to any System, the production of electrical energy from any System and its displacement of conventional energy generation, including (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO_2), methane (CH_4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to

the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Tax Credits or net metering credits provided by the Utility. Client and Service Provider shall file any tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits and Green-e® products.

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

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

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

6. Conditions to Obligations.

a. **Conditions to Service Provider's Obligations.** Service Provider's obligations under this Agreement are conditioned on the completion of the following conditions to Service Provider's reasonable satisfaction on or before the Condition Satisfaction Date:

i. Completion of a physical inspection of All Facilities and All Premises including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of All Facilities and All Premises for All Systems;

ii. Approval of (A) this Agreement, and (B) the Construction Agreement (if any) for All Systems by Service Provider's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Service Provider and any contractor or subcontractor to install All Systems. "**Financing Parties**" means a person or persons providing construction or permanent financing to Service Provider in connection with construction, ownership, operation and maintenance of All Systems, or, if applicable, means any person to whom Service Provider has transferred the ownership interest in All Systems, subject to a leaseback of the Systems from such person;

iii. Confirmation that Service Provider will obtain all applicable Environmental Incentives and Tax Credits;

iv. Receipt of all necessary zoning, land use and building permits;

v. Execution of all necessary agreements with the Utility for interconnection of All Systems to Facility electrical system and/or the Utility's electric distribution system; and

vi. Prior to Service Provider commencing construction and installation of any System, Service Provider shall have received (A) proof of insurance for all insurance required to be maintained by Client under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over any Premises or Facility, as applicable, that such person will recognize Service Provider's rights under this Agreement for as long as Service Provider is not in default hereunder, and (C) a signed and notarized original copy of an easement agreement from owner of the relevant Premises, substantially in the form attached hereto as **Exhibit 4**.

vii. Prior to Service Provider commencing construction and installation of All Systems, Client shall have filed a Notice of Exemption under the California Environmental Quality Act ("**CEQA**") and the applicable thirty-five (35) day statute of limitations shall have run.

b. **Conditions to Client's Obligations.** Client's obligations under this Agreement are conditioned on the completion of the following conditions to Client's reasonable satisfaction on or before the Condition Satisfaction Date:

i. Client's obligations under Sections 4(a) and 4(b) are conditioned on the occurrence of the Commercial Operation Date for All Systems.

ii. Client shall have received (A) proof of insurance for all insurance required to be maintained by Service Provider under this Agreement, (B) a signed and notarized original copy of the easement agreement from owner of the Premises, substantially in the form attached hereto as **Exhibit 4**, and (C) a signed and notarized original copy of the easement agreement entered into between the owner of the Premises and the Service Provider.

iii. Client, as lead agency, shall have filed a Notice of Exemption under CEQA and the applicable thirty-five (35) day statute of limitations shall have run.

c. **Failure of Conditions.** If any of the conditions listed in subsections (a) or (b) above are not satisfied by the applicable dates specified in those subsections with respect to any particular System or any particular Premises, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then the Party that has not failed to meet an obligation may terminate this Agreement with respect to the relevant System or the relevant Premises upon ten (10) days' written notice to the other Party. Any termination, whether in part or in whole, of this Agreement contemplated by this Section 6(c) shall be without liability for costs or damages and shall not trigger a default under this Agreement.

Notwithstanding any other term in this Agreement if Service Provider's conditions in Section 6(a) are not satisfied by September 30, 2024 with respect to any individual System or Premises, either Party shall have the right to terminate this Agreement with respect to that particular System and Premises for which the conditions in Section 6(a) have not been satisfied and for which construction of the solar panel system has not commenced as of such date on ten (10) days' notice to the other Party, regardless of the cause of the delay and regardless of whether the circumstances were beyond Service Provider's control.

7. **Service Provider's Rights and Obligations.**

a. **Permits and Approvals.** Service Provider, with Client's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

i. any zoning, land use and building permits required to construct, install and operate All Systems; and

ii. any agreements and approvals from the Utility necessary in order to interconnect All Systems to each Facility electrical system and/or the Utility's electric distribution system.

Client shall cooperate with Service Provider's reasonable requests to assist Service Provider in obtaining such agreements, permits and approvals. Service Provider shall use commercially reasonable efforts to obtain all permits and approvals within five hundred forty (540) days after full execution of this Agreement.

b. **Standard System Repair and Maintenance.** Service Provider shall construct and install All Systems at All Premises. During the Term, Service Provider will operate and perform all routine and emergency repairs to, and maintenance of All Systems in order to keep All Systems in good working order and producing electric energy in accordance with manufacturers' specifications, at its sole cost and expense, except for any repairs or maintenance resulting from Client's negligence, willful misconduct or breach of this Agreement. Service Provider shall not be responsible for any work done by others (excepting Service Provider's contractors and subcontractors) on any part of any System unless Service Provider authorizes that work in advance in writing. Service Provider shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of any System by anyone other than Service Provider or Service Provider's contractors. If any System requires repairs for which Client is responsible, Client shall pay Service Provider for diagnosing and correcting the problem at Service Provider's or Service Provider's contractors' then current standard rates. Service Provider shall provide Client with reasonable notice prior to accessing any Facility to make standard repairs. Service Provider will

make all reasonable efforts to ensure that its maintenance and repairs to any Facility do not adversely impact Client's business hours and operations.

c. **Non-Standard System Repair and Maintenance.** If Service Provider incurs incremental costs to maintain any System due to site conditions which are not reasonably visible to Service Provider upon inspection of the relevant Facility prior to entry into this Agreement or due to the inaccuracy of any information provided by Client and relied upon by Service Provider, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Service Provider. In such event, the Parties will negotiate such equitable adjustment in good faith.

d. **Breakdown Notice.** Service Provider shall notify Client within twenty-four (24) hours following Service Provider's discovery of (i) any material malfunction in the operation of any System, or (ii) an interruption in the supply of electrical energy from any System. Client and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Client shall notify Service Provider immediately upon the discovery of an emergency condition affecting any System.

e. **Suspension.** Notwithstanding anything to the contrary herein, Service Provider shall be entitled to suspend delivery of electricity from a System to the relevant Delivery Point without penalty for the purpose of maintaining and repairing such System, and such suspension of service shall not constitute a breach of this Agreement; provided, that Service Provider shall use commercially reasonable efforts to minimize any interruption in service to the Client. Client shall not be responsible for paying Service Provider for energy that a System was capable of generating and would have provided but for such suspension under this Section 7(e).

f. **Use of Contractors and Subcontractors.** Service Provider shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Service Provider shall continue to be responsible for the quality of the work performed by its contractors and subcontractors and shall be responsible for its contractors and subcontractors' adherence with the terms of this Agreement, where applicable.

g. **Liens and Payment of Contractors and Suppliers.** Service Provider shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Service Provider under this Agreement and shall keep each Facility free and clear of any liens related to such charges., except for those liens which Service Provider is permitted by law to place on such Facility following non-payment by Client of amounts due under this Agreement. Service Provider shall indemnify Client for all claims, losses, damages, liabilities and expenses resulting from any liens recorded against any Facility or any Premises in connection with such charges. In the event any lien is recorded against any Facility or any Premises or any stop notices filed in connection with any work performed or materials furnished to Service Provider, within thirty (30) days after the recordation of such lien or filing of such stop notice Service Provider shall either discharge and cancel such lien of record, or post a bond sufficient under the laws of the State of California, to release the same as a lien against any Facility or any Premises or file a stop notice release bond. If Service Provider fails to timely satisfy the foregoing obligations, Service Provider shall pay to Client within one (1) business day of written request all amounts so paid by Client, including attorney's fees, together with interest at the rate of twelve percent (12%).

h. **No Warranty.** NO WARRANTY OR REMEDY, 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, SHALL APPLY. The remedies set forth in this Agreement shall be Client's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

i. **Project Stabilization Agreement.** Service Provider shall comply in all respects with the Project Stabilization Agreement which is incorporated herein by reference. Service Provider shall comply with all provisions of the Project Stabilization Agreement, including without limitation Section 3.1 thereof, and shall ensure that each "Contractor" (as that term is defined within the Project Stabilization Agreement) will execute an Agreement to be bound as attached to the Project Stabilization Agreement.

j. **Prevailing Wages.** This Agreement is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. Service Provider

is aware of the requirements of California Labor Code §§1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the improvements being constructed by Service Provider under this Agreement are being performed as part of an applicable "public works" or "maintenance" project, as defined by the prevailing wage laws, Service Provider agrees to fully comply with such laws, where applicable. These rates are on file at Client's main office or may be obtained online at http//www.dir.ca.gov/dlsr. Service Provider shall post a copy of these rates at All Premises. Service Provider shall defend, indemnify and hold the Client, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the prevailing wage laws. It shall be mandatory upon the Service Provider and all of its contractors and subcontractor(s) performing work at any Premises shall to comply with all applicable California Labor Code provisions, which include, but are not limited to registration as a public works contractor prevailing wages, employment of apprentices, and the payment of not less than the required prevailing rates and overtime hours of labor, certified payroll records, contractor registration with the California Department of Industrial Relations and debarment of contractors and subcontractors. Service Provider shall comply with this Section 7(j) and the Project Stabilization Agreement.

k. **Trenching.** Pursuant to California Labor Code §6705, if any System is a public work involving an estimated expenditure in excess of $25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, Service Provider will, in advance of excavation, submit to Client and/or a registered civil or structural engineer, employed by Client, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Client or by the person to whom authority to accept has been delegated by Client. Pursuant to California Labor Code §6705, nothing in this paragraph imposes tort liability on Client or any of its employees.

l. **Hazardous Materials and Site Conditions.** Pursuant to California Public Contract Code §7104, if a System is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Service Provider will promptly, and before the following conditions are disturbed, notify Client, in writing, of any (a) material that Service Provider believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at any Premises differing from those indicated by information about the Premises made available to Service Provider before the Effective Date; or (c) unknown physical conditions at any Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. Client will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in Service Provider's cost of, or the time required for, performance of any System will issue a change order by changing the payment per kWh of electric energy produced with respect to such System, however nothing herein shall be interpreted to require Client to pay for the construction of a System or any portion thereof in any manner other than the payment per kWh of electric energy produced. If a dispute arises between Client and Service Provider, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Service Provider's cost of, or time required for, performance of any a System, the Parties will attempt in good faith to resolve such dispute. If the Parties are unable to resolve such dispute, then either Party may terminate this Agreement with respect to such System upon ten (10) days' written notice to the other Party. Any termination of this Agreement with respect to such System contemplated by this Section 7(l) shall be without liability for costs or damages and shall not trigger a default under this Agreement. In the event of such termination, Service Provider shall return the relevant Premises to its pre-construction condition, reasonable wear and tear excepted.

m. **Lead Contamination.** Pursuant to California Education Code §32244, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination will be utilized on any System. Client acknowledges and agrees that actions to abate existing risk factors for lead are expressly excluded from each System, and Service Provider will have no obligation to take any such abatement action.

n. **Fingerprinting.** If necessary, as determined in Client's sole discretion, Service Provider shall ensure that all persons entering any Premises to construct or work on any System comply with the provisions of California Education Code §45125.1, regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of employees of entities with a contract with a school district. Service Provider shall not permit any person entering any Premises to construct or work on any System to have any contact with Client's pupils until such time as Service Provider has verified in writing to Client that such person has not been convicted of a felony, as defined in Education Code §45125.1.

o. **Iran Contracting Act Certification.** Service Provider shall execute the Iran Contracting Act Certification, as required by California Public Contract Code Section 2204.

p. **Alcohol and Tobacco-Free Campus Policy.** By executing this Agreement, Service Provider agrees that it will abide by and implement Client's Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on Client-owned or leased buildings, on Client property and in Client vehicles. Client shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

q. **Bonds**. Service Provider or its contractor shall deliver to Client evidence that Service Provider or its contractor maintains payment and performance bonding in favor of the Service Provider (and District as an additional obligee) through the Commercial Operation Date and meeting the following requirements:

i. Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the faithful performance of the contractor of its contract with Service Provider; and

ii. Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, in a form commonly used for such purposes, in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the Agreement.

r. **Commercial Operation and Target Date.** Service Provider shall use commercially reasonable efforts to cause Commercial Operation for All Systems to occur on or before December 31, 2024 (the "**Target Date**"). Successful completion of the activities described in Article 6 shall be conditions precedent to Service Provider's obligations to install and operate the Systems and otherwise perform its obligations under this Agreement. In the event that any System has not achieved Commercial Operation by the Target Date and such failure to achieve Commercial Operation prior to the Target Date is not due to Force Majeure or excusable delay outside Service Provider's direct control such as caused by the Utility, authority having jurisdiction, supply chain or tariffs, etc., Service Provider shall notify Client in writing within five (5) business days, provide an updated Target Date, and make payment to Client pursuant to Section 7(u) below.

s. Service Provider will provide Client the opportunity to review and approve all designs which Client shall review within 10 business days, so that Service Provider may promptly proceed to begin construction of any System. Service Provider will provide a schedule for completion at each site for Client review and approval (not to be unreasonably withheld).

t. **Notice of Commercial Operation.** Service Provider shall notify Client when any System is capable of Commercial Operation, and shall in such notice certify to Client the Commercial Operation of any System, or any portion of thereof.

u. **Delay Damages.**

i. Notwithstanding any other term in this Agreement or any agreement between the Parties to the contrary, if Service Provider has not achieved the Commercial Operation of any System by the Target Date and the Client has provided written notice, it is understood, acknowledged and agreed that Client may suffer damages to the extent the delays result in increased costs in energy bills that the Client would have avoided if Service Provider had timely completed the installation, in which case until the date the System achieves Commercial Operation (the "**Delay Damages Period**"), Service Provider shall reimburse Client in an amount ("**Delay Damages**") equal to (a) the incremental out-of-pocket actual cost in excess of the Contract Price that Client reasonably incurred to purchase replacement power for any System for which Commercial Operation did not occur, multiplied by (b) the reasonably expected output of electricity from such Facility that would have been delivered to the relevant Delivery Point during such Delay Damages Period.

ii. Beginning approximately ten (10) days after the end of the first (1st) month of the Delay Damages Period and on or about the tenth (10th) day after the end of each month thereafter during the Delay Damages Period, Client shall render to Service Provider supporting documentation of the incremental out-of-pocket actual cost in excess of the Contract Price that Client reasonably incurred to purchase replacement power during the prior month for the individual System for which Commercial Operation did not occur. Payment for Delay Damages due and owing (if any) shall be made to Client by Service Provider not later than thirty (30) days

after Client delivers such documentation to Service Provider. Payment of such Delay Damages shall be Client's sole and exclusive remedy during the Delay Damages Period for any failure by Service Provider to timely achieve the Target Date for any System.

v. **Maintenance Agreement.** In order to clarify responsibilities of both parties, Service Provider will separately provide any agreement with a third party that details the maintenance procedures applicable to any System (the "**Maintenance Agreement**"), which Service Provider may redact for any confidential or other proprietary information. While maintenance obligations remain the responsibility of Service Provider, Client staff can retain a copy of the Maintenance Agreement for its files to help determine the maintenance needs relating to any System.

8. **Client's Rights and Obligations.**

a. **Easement to Area; Facility Access Rights.** The parties acknowledge that pursuant to a separate easement agreement (the "**Easement Agreement**"), Service Provider has granted an easement over the areas of the premises described in the Easement Agreement (the Easement Areas described in the Easement Agreement shall also be referred to herein individually as a "**Premises**" and collectively as "**All Premises**"). Service Provider may, at its sole cost and expense, record the Easement Agreement or a memorandum thereof, which memorandum Service Provider may prepare consistent with the terms and conditions of the Easement Agreement in the appropriate land registry or recorder's office. In addition, Client and Service Provider shall execute a termination of the Easement Agreement, in recordable form, which shall be duly recorded upon the earlier of (i) the complete removal of the Systems in accordance with the terms of this Agreement following expiration or termination hereof, or (ii) upon mutual agreement of the Parties or (iii) Client's exercise of its purchase option under Section 15 of this Agreement. Service Provider shall not unreasonably interfere with the operation of Client's business conducted in any Facility.

b. **OSHA Compliance.** Service Provider shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.

c. **Maintenance of Facility.** Client shall, at its sole cost and expense, maintain each Facility (other than any System) in good condition and repair. Client will make reasonable efforts to ensure that each Facility remains interconnected to the Utility grid at all times and will not permit cessation of electric service to such Facility from the Utility. Client is fully responsible for the maintenance and repair of each Facility's electrical system from such Facility to the relevant Delivery Point. Client shall make reasonable efforts to properly maintain in full working order all of Client's electric supply or generation equipment that Client has custody and control over while utilizing any System. Client shall promptly notify Service Provider of any matters of which it actually becomes aware pertaining to any damage to or loss of use of any System or that could reasonably be expected to adversely affect any System, including pursuant to a Lease-Leaseback Construction Contract (as defined below).

d. **No Alteration of Facility.** Client shall not make any alterations or repairs to any Facility which could adversely affect the operation and maintenance of a System without Service Provider's prior written consent. If Client wishes to make such alterations or repairs, Client shall give prior written notice to Service Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Service Provider the opportunity to advise Client in making such alterations or repairs in a manner that avoids damage to such System, but, notwithstanding any such advice, Client shall be responsible for all damage to any System caused by Client or its contractors, including by any contractors under a Lease-Leaseback Construction Contract. To the extent that temporary disconnection or removal of a System is necessary to perform such alterations or repairs, such work and any replacement of such System after completion of Client's alterations and repairs, shall be done by Service Provider or its contractors at Client's cost. In addition, Client shall pay Service Provider an amount equal to the sum of (i) payments that Client would have made to Service Provider hereunder for electric energy that would have been produced by the relevant System during such disconnection or removal; (ii) revenues that Service Provider would have received with respect to such System under any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Service Provider would have received with respect to electric energy that would have been produced by such System during such disconnection or removal; and (iv) Tax Credits that Service Provider (or, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by such System during such disconnection or removal. All of Client's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

e. **Outages.** Client shall be permitted to be offline for a total of forty (40) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which hours Client shall not be obligated to accept or pay for electricity

from the relevant System; provided, however, that Client must notify Service Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty (40) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Service Provider shall reasonably estimate the amount of electricity that would have been produced by the relevant System, adjusted for weather, during such excess Scheduled Outages or unscheduled outages, and shall invoice Client for such amount (together with revenues that Service Provider would have received in respect of such energy under the any applicable rebate or similar program, from Environmental Attributes and Tax Credits, or, with respect to Tax Credits, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners would have received) in accordance with Section 4.

f. **Liens.** Client shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to any System or any interest therein. Client shall immediately notify Service Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Service Provider, and shall indemnify Service Provider against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 18(a), Service Provider may grant a lien on the Systems and may assign, pledge or otherwise collaterally assign its interests in this Agreement and the Systems to any Financing Party. Notwithstanding the foregoing, Service Provider shall have the right to file a UCC-1 Financing Statement with respect to the Systems or any part thereof but such lien shall not be recorded against the fee interest of Client in any Premises.

Notwithstanding any other provision of this Agreement or the accompanying Easement Agreement to the contrary, the District shall be permitted to enter into lease-leaseback construction contracts pursuant to Education Code Section 17406 (each, a "**Lease-Leaseback Construction Contract**"), and issue "Certificates of Participation" or other similar debt instruments involving any Premises affected by this Agreement without the consent of Service Provider.

g. **Security.** Provider shall take all reasonably necessary safety precautions in providing the Energy Output and shall comply in all material respects with all applicable laws pertaining to the safety of persons and real and personal property. Client shall be responsible for using commercially reasonable efforts to maintain the physical security of each Facility and the relevant System against known risks and risks that should have been known by Client. Client shall not be responsible for hiring private security to protect any System or for erecting a fence surrounding any System. Client will not conduct activities on, in or about any Premises or any Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting any System.

h. **Insolation.** Client understands that unobstructed access to sunlight ("**Insolation**") is essential to Service Provider's performance of its obligations and a material term of this Agreement. Client shall use best efforts to not cause and, where possible, shall not permit any interference with any System's Insolation. If Client becomes aware of any activity or condition that could diminish the Insolation of a System, Client shall notify Service Provider immediately and shall cooperate with Service Provider using best efforts to preserve such System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Service Provider, that such injury may not be adequately compensated by an award of money damages, and that Service Provider is entitled to seek specific enforcement of this Section 8(h) against Client.

i. **Breakdown Notice.** Client shall notify Service Provider within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of a System; or (ii) any occurrences that could reasonably be expected to adversely affect a System. Client shall notify Service Provider immediately upon (A) an interruption in the supply of electrical energy from a System; or (B) the discovery of an emergency condition respecting a System. Client and Service Provider shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Service Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

j. **Elementary and High School District's Relationship.** The obligations of the Elementary School District and High School District under this Agreement shall be separate and specific to each District individually as they relate to the Systems installed on each District's property. Neither District shall be responsible for the other District's default. If one District defaults, Service Provider's rights shall be limited to, and prorated such that they apply to, and in proportion to, only to the Systems installed on the defaulting District's property and the energy generated thereby and any related Environmental Incentives, Environmental Attributes, or Tax Credits. Notwithstanding the foregoing, either District may with the consent of the other District individually enforce the rights of both Districts as the "Client" under this Agreement, or without the consent of the other District may choose to enforce its rights individually,

provided that any remedy or damages shall be limited to, and prorated such that they apply to, and in proportion to, only to those Systems installed on the enforcing District's property.

k. **Client Repairs**.

(i) In the event that Client decides, to repair a portion of a rooftop or a parking area (a "**Repair**"), and if such Repair requires the partial or complete disassembly or movement of a System (a "**Removal and Reinstallation**"), Service Provider shall diligently and promptly cooperate with Client in connection with such Removal and Replacement. Client must provide Service Provider sixty (60) days' prior written notice of any Removal and Reinstallation. In no event shall Service Provider be required to remove more than five percent (5%) of a System at a single time, and Repairs that affect more than 5% of a System shall be completed in a phased manner so that at no one time more than 5% of such System be removed; and provided further, that Client shall work in good faith with Service Provider to minimize the disruption to the applicable System attributable to Repairs (the conditions set forth in the foregoing provisos, collectively, the "**Re and Re Conditions**"). Except as otherwise provided herein, Client shall be responsible for the full cost to Service Provider of each Removal and Reinstallation, and Client shall reimburse Service Provider for any Lost Energy Revenue (as defined below) during the time all or a portion of a System are out of operation as a result of a Repair ("**Repair Time**"). This Section shall not apply if the Removal and Repair is required as a result of Service Provider's use, operation of, or maintenance of a Property.

(ii) "Lost Energy Revenue" means the sum of the (A) revenue Service Provider would have received from the sale of a System's electrical generation during the Repair Time under this Agreement but for the disruption in such System's operation solely caused by the Removal and Reinstallation for the Repair, (B) revenue Service Provider would have received from rebate, assistance or other incentive programs related to operating such System during the Repair Time but for the disruption in such System's operation solely caused by the Removal and Reinstallation for the Repair, and (C) revenues from Environmental Attributes and Tax Credits that Service Provider (or, with respect to Tax Credits, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by such System during the Removal and Reinstallation for the Repair.

(iii) Service Provider shall be entitled to Lost Energy Revenue only upon providing to Client reasonably detailed written documentation evidencing estimated Lost Energy Revenue, including a full explanation of the metrics and calculations supporting any claimed Lost Energy Revenue sums, has occurred consistent with the conditions provided herein. Service Provider must claim and provide requisite documentation to Client no later than ninety (90) days after an occurrence of Lost Energy Revenue except in the case of lost incentives, rebates or tax credits, where Service Provider must claim and provide requisite documentation to Client no later than ninety (90) days after the receipt by Service Provider of written notice from any governmental authority or independent auditor indicating that Service Provider or its owners are ineligible for such incentive, rebate or tax credit or such items are or will be subject to recapture.

(iv) For the purpose of calculating the payments for Lost Energy Revenue during any Repair Time, Lost Energy Revenue shall be deemed to have been produced at the same applicable pro rata rate based on the monthly estimate of energy production with respect to a System (as reasonably determined by Service Provider and as shall be provided to Client upon Client's request) as follows: (i) in the case of Repair Time occurring within the first twelve (12) months of such System's operation, such estimate shall be based on the total energy production of the prior month of operation; and (ii) in the case of Repair Time occurring after the first twelve (12) months of a System's operation, such estimate shall be based on the total energy production during the same month in the prior calendar year, in each case, as if there had been no interruption in such System's operation.

9. Change in Law.

a. Definition of Change in Law. "**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining any System, or other performance of the Service Provider's obligations hereunder and which has a material adverse effect on the cost to Service Provider of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

b. **Effect of Change in Law.** If any Change in Law occurs that has a material adverse effect on the cost to Service Provider of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Client from Service Provider of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Service Provider shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. Relocation of a System.

a. **System Relocation.** If Client ceases to conduct business operations at a Facility, or otherwise vacates such Facility prior to the expiration of the Term, Client shall have the option to provide Service Provider with a mutually agreeable substitute Premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Client shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Client shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date, and (ii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the relevant System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Client shall be obligated to provide a new executed and notarized easement agreement covering the substitute Premises in form and content substantially similar to the Easement Agreement. Client shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute Premises.

b. **Costs of Relocation.** Client shall pay all costs associated with relocation of the relevant System, including all costs and expenses incurred by or on behalf of Service Provider in connection with removal of such System from the relevant Facility and installation and testing of such System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Service Provider's Financing Parties in such System. In addition, Client shall pay Service Provider an amount equal to the sum of (i) payments that Client would have made to Service Provider hereunder for electric energy that would have been produced by the relevant System during the relocation; (ii) revenues that Service Provider would have received with respect to such System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; and (iii) revenues from Environmental Attributes and Tax Credits that Service Provider (or, with respect to Tax Credits, if Service Provider is a pass-through entity for tax purposes, Service Provider's owners) would have received with respect to electric energy that would have been produced by such System during the relocation (collectively, "**Service Provider's Lost Revenue**"). The Parties acknowledge and agree that a relocation of a System occurring in accordance with this Section 10 shall not result in any extension of the Term of this Agreement.

c. **Calculation of Lost Revenue.** In the calculation of Service Provider's Lost Revenue, determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the relevant System in the same period in the previous Contract Year, unless Service Provider and Client mutually agree to an alternative methodology. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

d. **Adjustment for Insolation; Termination.** Service Provider shall remove the relevant System from the vacated Facility prior to the termination of Client's ownership, lease or other rights to use such Facility. Service Provider will not be required to restore such Facility to its prior condition but shall promptly pay Client for any damage caused by Service Provider during removal of the relevant System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Service Provider shall have the right to make an adjustment to **Exhibit 1** such that Client's payments to Service Provider are the same as if the relevant System were located at the original Facility. If Client is unable to provide such substitute facility and to relocate the relevant System as provided, any early termination will be treated as a default by Client.

11. Metering Devices and Measurement.

a. Service Provider shall install one (1) meter, and may install more meters (each, a "**Metering Device**") as Service Provider deems appropriate, at or immediately before each Delivery Point to measure the output of the relevant System. Client shall have the right to have a check meter on Client's side of each Delivery Point. Each Metering Device shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility and shall be tested periodically in accordance with generally accepted standards in the industry and shall be adjusted in the event of a variance of more than one percent (1%).

b. **Measurement.** Readings of any Metering Device shall be conclusive as to the amount of energy output; provided that if a Metering Device is out of service, is discovered to be inaccurate pursuant to Section 11(c), or registers inaccurately, measurement of energy output shall be determined in the following sequence: first, by estimating energy output during periods when such Metering Device was registering inaccurately by obtaining the product of (i) the average ratio of kWh of energy output per System generating capacity (measured in kW) of each other System whose Metering Device was in service and registering accurately during such period multiplied by (ii) the System generating capacity (measured in kW) of the System whose Metering Device was registering inaccurately; and, second, applying such estimated energy output (a) for the actual period during which inaccurate measurements were made or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, to an assumed period equal to one-half of the period from the date of the last previous test of such Metering Device through the date the inaccuracy was identified and corrected; provided, however, that, in the case of clause (b), the period covered by the correction under this Section 11(b) shall not exceed six (6) months.

c. **Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy.** The following steps shall be taken to resolve any disputes regarding the accuracy of a Metering Device:

i. If either Party disputes the accuracy or condition of such Metering Device, such Party shall so advise the other Party in writing.

ii. Service Provider shall, within fifteen (15) business days after receiving such notice from Client or issuing such notice to Client, advise Client in writing as to Service Provider's position concerning the accuracy of such Metering Device and Service Provider's reasons for taking such position.

iii. If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may request a test of such Metering Device at requesting Party's expense.

iv. If such Metering Device is found to be inaccurate by not more than one percent (1%), any previous recordings of such Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of such Metering Device under Section 11(c)(i) shall bear the cost of inspection and testing of such Metering Device.

v. If such Metering Device is found to be inaccurate by more than one percent (1%) or if such Metering Device is for any reason out of service or fails to register, then (a) Service Provider shall promptly cause such Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 11(b). If as a result of such adjustment the quantity of energy output for any period is decreased (such quantity, the "**Energy Deficiency Quantity**"), Service Provider shall reimburse Client for the amount paid by Client in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of such Metering Device. If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "**Energy Surplus Quantity**"), Client shall pay for the Energy Surplus Quantity at the Contract Price during the applicable Contract Year, and shall bear the cost of inspection and testing of such Metering Device.

12. Default, Remedies and Damages.

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

i. Failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) business days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");

ii. Failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent

reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

iii. If any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. Client loses its rights to occupy and enjoy any Premises; or (subject to Client's rights under Section 8(d) and Section 10(a)) the siting, use or operation of a System on the relevant Premises is prevented, disturbed or interfered with by Client or any person or entity with superior rights to such Premises, such as Client's landlords or Client's or such landlord's mortgagees or other encumbrancers; (for clarity, Service Provider is the Non-Defaulting Party with respect to the events, conditions or circumstances contemplated by this clause (iv));

v. A Party, or its guarantor (if any), becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect;

vi. Client prevents Service Provider from installing a System or otherwise fails to perform in a way that prevents the delivery of electric energy from such System to Client. Such Default Event shall not excuse Client's obligations to make payments that otherwise would have been due under this Agreement;

vii. Unreasonable interference by Service Provider with the operations of Client at any Premises, if the interference is curable by suspension of operation of the relevant Facility and Service Provider fails to suspend operation of such Facility within seventy-two (72) hours of Client's written notice to Service Provider regarding the interference without good cause, as determined by Client;

viii. Service Provider fails to execute and maintain all necessary Interconnection Agreements with a Utility; or

ix. Service Provider's installation or operation of a Facility voids the warranty for the roof at the Premises where that Facility is located.

b. **Remedies.**

i. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement (which includes, if Service Provider is the Non-Defaulting Party, disconnecting the Systems). Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon fifteen (15) days' prior written notice to the Defaulting Party following the Payment Default.

ii. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon fifteen (15) days' prior written notice to the Defaulting Party following the occurrence of the Default Event. This date shall constitute the "**Early Termination Date**." A Party's election to pursue the remedy provided in this Section 12(b) is not intended to be exclusive and does not prevent Client from seeking any damages and remedies at law or in equity, subject to Section 12(b)(iii) below.

iii. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

A. Client. If Client is the Defaulting Party and Service Provider terminates this Agreement, the Termination Payment to Service Provider shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the Systems value, (b) MACRS accelerated depreciation equal to eighty five percent (85%) of

the Systems value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Service Provider pursuant to the terms of this Agreement (Service Provider shall furnish Client with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c); (2) the net present value (using a discount rate of twelve percent (12%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term; (3) removal costs as provided in Section 12(b)(iii)(C); and (4) any and all other amounts previously accrued under this Agreement and then owed by Client to Service Provider. The Parties agree that actual damages to Service Provider in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Client would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Service Provider as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

B. Service Provider. If Service Provider is the Defaulting Party and Client terminates this Agreement, the Termination Payment to Client shall be equal to the sum of (1) the net present value (using a discount rate of twelve percent (12%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the Systems for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Client in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Client; and (4) any and all other amounts previously accrued under this Agreement and then owed by Service Provider to Client. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 12(b), then following such termination, Service Provider shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the Systems. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event. Client may have any System removed and stored at Service Provider's sole cost and expense if Service Provider fails to remove any System within one hundred and eighty (180) calendar days after the Early Termination Date.

13. **Representations and Warranties.**

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

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

ii. No suit, action, arbitration, legal, administrative or other proceeding is pending or, to the best of each Party's knowledge, has been threatened against the Party that would affect the validity or enforceability of this Agreement or the ability of the Party to fulfill its commitments hereunder, or that would, if adversely determined have a material adverse effect on the Party's performance of this Agreement; and

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

b. **Client's Representations and Warranties.** Client represents and warrants to Service Provider the following:

i. Easement. Client has the full right, power and authority to grant the rights contained in the Easement Agreement. Such grant does not violate any law, ordinance, rule or other governmental restriction applicable

to Client or the Facilities and is not inconsistent with and will not result in a breach or default under any agreement by which Client is bound or that affects any Facility. If Client does not own any Premises or Facility, Client has obtained all required consents from the owner of such Premises and/or Facility to grant the right contained in the Easement Agreement and enter into and perform its obligations under this Agreement;

ii. Other Agreements. Neither the execution and delivery of this Agreement by Client nor the performance by Client of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Client is a party or by which Client or any Facility is bound;

iii. Accuracy of Information. All information provided by Client to Service Provider, as it pertains to each Facility's physical configuration, Client's planned use of each Facility, and Client's estimated electricity requirements, is accurate in all material respects; and

iv. Client Status. Client is not a public electric utility or a public electric utility holding company and is not subject to regulation as a public electric utility or a public electric utility holding company.

c. **Service Provider's Representations and Warranties.** Service Provider represents and warrants to Client the following:

i. To Service Provider's knowledge, manufacturers' warranties will be in effect with respect to All Systems;

ii. To Service Provider's knowledge, manufacturer's warranties will be in effect with respect to any roof installment or improvement;

iii. To Service Provider's knowledge, each Delivery Point contains sufficient capacity to accommodate the production by the relevant System;

iv. To Service Provider's knowledge, there is no material adverse change that affects the creditworthiness of Service Provider, its contractors or its subcontractors to perform Service Provider's obligations under this Agreement;

v. Service Provider has received adequate assurance from its financiers that required funding arrangements have been established; and

vi. Service Provider will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Client (including all labor costs).

14. System and Facility Damage and Insurance.

a. System and Facility Damage.

i. Service Provider's Obligations: System Damage. If any System is damaged or destroyed other than by Client's gross negligence or willful misconduct, Service Provider shall promptly repair and restore such System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of All Systems are destroyed during the last five (5) years of the Initial Term or at any time during any Additional Term, Service Provider shall not be required to restore the damaged Systems, but may instead terminate this Agreement upon twenty (20) business days notice to the Client. This Agreement will terminate effective upon conclusion of the twenty (20) day notice period, unless Client agrees (A) to pay for the cost of such restoration of the damaged System, or (B) to purchase the Systems "AS-IS" at the greater of (1) the Fair Market Value of the Systems and (2) the sum of the amounts described in Section 12(b)(iii)(A)(1) and Section 12(b)(iii)(A)(3). Notwithstanding the foregoing, Client acknowledges that if any System constitutes collateral for the benefit of the Financing Parties, such Financing Parties or an agent or trustee on their behalf will be the loss payees in respect of property or casualty insurance for that System and will have the right to apply the proceeds of such insurance in accordance with the financing arrangements to which they are a party. Service Provider shall, at Service Provider's sole cost and expense, remove the damaged System from the relevant Facility.

ii. Client's Obligations: Facility Damage. If a Facility is damaged or destroyed by Client's gross negligence or willful misconduct, such that the operation of the relevant System and/or Client's ability to accept the electric energy produced by such System are materially impaired or prevented, Client shall promptly repair and restore such Facility to its pre-existing condition; provided, however, that if more than fifty percent (50%) of All Facilities are destroyed during the last five (5) years of the Initial Term or during any Additional Term, Client may elect either (A) to restore the damaged Facilities, or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Service Provider and Client shall maintain the following insurance:

i. Service Provider's Insurance. Service Provider shall maintain (A) "all-risk" property insurance on All Systems for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) annual aggregate, (C) employer's liability insurance with coverage of at least five hundred thousand dollars ($500,000), and (iv) workers' compensation insurance as required by law. Service Provider shall add Client as an additional insured to all aforementioned policies. Such insurance shall be primary coverage without right of contribution from any insurance of Client.

ii. Client's Insurance. Client shall maintain commercial general liability insurance with coverage of at least one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) annual aggregate.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days' prior written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days' prior written notice before the insurance is otherwise cancelled or terminated; (ii) be written on an occurrence basis; and (iii) be

maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

d. **Certificates.** Upon the other Party's request each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

15. **Ownership; Purchase Option.**

a. **Ownership of System.** Client acknowledges that Service Provider (or its successor(s) or assignee(s)) is and will at all times be the legal and beneficial owner of each System, and all Environmental Attributes, and that each System is and shall remain personal property and shall not attach to or be deemed a part of, or be a fixture of or to, any Facility or any Premises. Each of the Service Provider and Client agree that the Service Provider (or the designated assignee of Service Provider permitted under Section 18) is the tax owner of All Systems and all tax filings and reports will be filed in a manner consistent with this Agreement. All Systems shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and otherwise for purposes of state and federal law. Service Provider shall file UCC1 Financing Statement and renew prior to such expiration dates at Service Provider's cost and expense. Client covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on any Facility or any Premises on notice of the ownership of All Systems and the legal status or classification of All Systems as personal property. If there is any mortgage or fixture filing against any Premises which could reasonably be construed as prospectively attaching to All Systems as a fixture of the Premises, Client shall provide a disclaimer or release from such lienholder. If Client is the fee owner of any Premises, Client consents to the filing of a disclaimer of any System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the relevant Facility is located. If Client is not the fee owner, Client will obtain such consent from such owner. Upon request, Client agrees to deliver to Service Provider a non-disturbance agreement in a form reasonably acceptable to Service Provider from the owner of the relevant Facility (if such Facility is leased by Client), any mortgagee with a lien on a Premises, and other Persons holding a similar interest in a Premises. To the extent that Client does not own a Premises or Facility, Client shall provide to Service Provider immediate written notice of receipt of notice of eviction from such Premises or Facility or termination of Client's lease of such Premises and/or Facility.

b. **Purchase Option.** At the end of each of the Contract Years set forth in **Exhibit 1**, so long as Client is not in default under this Agreement, Client may purchase All Systems from Service Provider on any such date for a purchase price equal to the greater of the fixed price set forth in as the "Purchase Option Price" of **Exhibit 1** or the Fair Market Value (as defined below) of All Systems. Client must provide a notification to Service Provider of its intent to purchase at least ninety (90) days prior to the end of the applicable Contract Year, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year. Service Provider shall transfer good title to All Systems to Client upon Service Provider's receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied, concerning All Systems, "as is, where is, with all faults"; provided that Service Provider shall assign to Client any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of All Systems, Client will assume complete responsibility for the operation and maintenance of All Systems and liability for the performance of All Systems, and Service Provider shall have no further liabilities or obligations hereunder. The Parties shall act in good faith to extend or shorten these time requirements to efficiently and reasonably complete the purchase.

c. **Determination of Fair Market Value.** The **"Fair Market Value"** means the value of All Systems as determined by the mutual agreement of Client and Service Provider. If Client and Service Provider cannot mutually agree to a Fair Market Value, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the fair market value of All Systems as if All Systems were operational for the entire useful life thereof and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraiser shall be borne by the Parties equally. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by random lot from two firms proposed by each Party.

16. **Indemnification and Limitations of Liability.**

a. **General.** To the fullest extent permitted by law, Service Provider (the "**Indemnifying Party**") agrees to indemnify, release, defendant, and hold harmless Client, its officials, officers, employees, volunteers, and agents (the "**Indemnified Parties**") from any loss, claim, liability, cost, expense, including attorney's fees (collectively, the "**Liabilities**") for any injury or damage to person or property, or of any kind or nature, occurring in, on, or about any Premises, arising for any reason which relate to: (i) the obligations of Service Provider, its employees, and agents under this Agreement; (ii) the acts or omissions of Service Provider or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Service Provider's Financing Party, or others acting on Service Provider's behalf or under Service Provider's authority or control; or (iii) the occupancy and/or use of any Premises (including but not limited to any improvements or personal property located therein) by Service Provider, or its officers, directors, employees, agents, representatives, invitees, contractors, subcontractors, suppliers, trespassers, Service Provider's Financing Party, or others acting on Service Provider's behalf or under Service Provider's authority or control. Service Provider's obligations under this Section 16, however, shall not extend to any Liabilities that are proximately caused by the sole negligence or willful misconduct of Client, its officials, officers, employees, volunteers, or agents.

b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 16(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 16(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.** Service Provider shall indemnify, defend and hold harmless all of Client's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near any Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Client shall indemnify, defend and hold harmless all of Service Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near any Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Service Provider or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about any Premises or any Premises generally or any deposit, spill or release of any Hazardous Substance. Service Provider shall not use Hazardous Substances in any Facility or at any Premises.

i. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or € for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

i. No Consequential Damages. Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder, even if advised of such. This Section 16(d)(i) does not apply, however, to any Termination Payment or any other damages the calculation of which is specifically provided for in this Agreement. In addition, the Parties agree that (A) in the event that Service Provider is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Client, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (B) in the event that Service Provider is retaining the Environmental Attributes produced by any Systems, and a breach of this Agreement by Client causes

Service Provider to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

17. Force Majeure.

a. Definition of Force Majeure. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; epidemic, pandemic (including but not limited to COVID-19), or quarantine; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Effect of Force Majeure Event. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. Payment Obligations Not Excused. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Client's ability to make payment.

d. Extended Force Majeure Event. If a Force Majeure event continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

18. Assignment and Financing.

a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided however in the event of a sale or lease by Client of a site where a solar facility is installed pursuant to this Agreement, Client shall have the right to assign this Agreement and the Easement Agreement concurrently to the purchaser of the relevant portion of any Premises; provided such purchaser is sufficiently creditworthy as reasonably determined by Service Provider. Notwithstanding the foregoing, Service Provider may, without the prior written consent of Client, (i) assign, pledge or otherwise collaterally assign its interests in this Agreement and All Systems to any Financing Party, (ii) directly or indirectly assign this Agreement and All Systems to an affiliate or subsidiary of Service Provider, (iii) assign this Agreement and the Systems to any entity through which Service Provider is obtaining financing or capital for All Systems, and (iv) assign this Agreement and All Systems to any person succeeding to all or substantially all of the assets of Service Provider (provided, that Service Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Service Provider's obligations hereunder by the assignee and only if the assignee shall have credit which is equal to or better than the credit of Service Provider at the time of execution of this Agreement). In the event of any such assignment, the Service Provider shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Service Provider's rights and/or obligations under this Agreement shall not result in any change to Client's rights and obligations under this Agreement any material change in the terms of this Agreement or any material reduction in the obligations of Service Provider hereunder. Client's consent to any other assignment shall not be unreasonably withheld if Client has been provided with reasonable proof that the proposed assignee (A) has comparable experience in operating and

maintaining photovoltaic solar systems comparable to All Systems and providing services comparable to those contemplated by this Agreement, and (B) has the financial capability to maintain All Systems and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

b. **Financing.** The Parties acknowledge that Service Provider may obtain construction and long-term financing or other credit support from one or more Financing Parties. In connection with an assignment pursuant to Section 18(a)(i)-(iv), Client agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

c. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Service Provider or its affiliates by Financing Parties, that such Financing Parties may require that Service Provider or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to All Systems and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Client agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement and there is no material reduction in the obligations hereunder owed to Client by Service Provider or such Successor Provider.

d. **Collateral Assignment.** Client hereby agrees that Service Provider shall have the right to hypothecate the Collateral as security for its obligations under any equipment lease or other financing arrangement related to the conduct of the installation, construction, operation, connection, disconnection, maintenance, alteration, repair, improvement, replacement, reconstruction and removal of All Systems. "**Collateral**" shall mean (i) All Systems, including but not limited to the solar electric generation and distribution system installed at the Facilities in accordance with this Agreement, which shall include all photovoltaic solar panels, mounting systems, inverters, transformers, integrators, all electrical lines and conduits required to collect and transmit electrical energy and such additional utility lines, cables, conduits transformers wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances common to such system; (ii) all other personal property within the Facilities owned by Service Provider; (iii) the renewable energy output produced by All Systems before the point of delivery of the electricity generated by All Systems to Client; and (iv) the environmental attributes, which include without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tractable renewable credits, or Green-e® products, as well accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies, and all other solar or renewable energy subsidies and incentives arising from or related to All Systems. Except as otherwise provided below, the assignment of this Agreement and Collateral by Service Provider for financing purposes shall be subject to the conditions to assignment provided in Section 18(a) of this Agreement (the "**Conditions to Assignment**"). In connection with the foregoing:

i. Consent to Collateral Assignment. Client hereby consents to the sale of the Collateral (or any part thereof) to a Service Provider Financing Party and/or the collateral assignment to Service Provider Financing Party of Service Provider's right, title and interest in and to this Agreement and/or the Collateral, provided compliance with the Conditions to Assignment. In connection with the foregoing, Client will exercise best efforts to review, execute and deliver within ten (10) business days of receipt of any all lien waivers, consents, acknowledgements, subordination agreements and other instruments and documentation reasonably required by Service Provider or Service Provider's Financing Party to be executed by Client in connection with any such sale, lease or collateral assignment of the Collateral and financing arrangement to Service Provider's Financing Party; provided that any such instruments or documentation must be in a commercially reasonable form and acceptable to Client.

ii. Service Provider's Financing Party Rights. Notwithstanding any contrary term of this Agreement:

(1) Provided that prior written notice has been given of such collateral assignment and considered approved pursuant to the Conditions to Assignment above, Service Provider's Financing Party, as collateral assignee of this Agreement, shall be entitled (a) to notice of any breach or default under this Agreement to which Service Provider is entitled pursuant to Section 12, and (b) but not required to exercise, in the place and stead of Service Provider, any and all rights and remedies of Service Provider in accordance with the terms of this Agreement.

(2) Service Provider's Financing Party shall have the right (exercisable in its sole and absolute discretion), but not the obligation, to perform acts, duty or obligation required of Service

Provider hereunder or cause to be cured any default of Service Provider hereunder in the time and manner provided by the terms of this Agreement.

(3) The Service Provider Financing Party shall, concurrently with delivery thereof to Service Provider, deliver to Client a copy of each notice of default given to Service Provider under the corresponding financing agreement and before enforcing any remedies and foreclosure rights under its security interest against the Collateral for a Service Provider default under its contractual obligations with Service Provider Financing Party. Upon the exercise of any remedies under a security interest in All Systems, including any foreclosure and sale thereof, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Service Provider to a Service Provider Financing Party in lieu thereof, the Service Provider Financing Party will ensure that the Conditions to Assignment are met for any intended transfer of the Collateral.

(4) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Service Provider under the United States Bankruptcy Code, at the request of Service Provider's Financing Party made within sixty (60) calendar days of such termination or rejection, Client shall enter into a new agreement with Service Provider's Financing Party having substantially the same terms and conditions as this Agreement; provided that Service Provider's Financing Party enters into a contract with a qualified third-party service provider that meets the standards required in the Agreement, including without limitation, this Section 18 regarding Conditions to Assignment, to operate and maintain the Facilities. The foregoing shall be subject however, to any and all rights, provisions, requirements, and protections afforded to Client under the U.S. Bankruptcy Code including but not limited to, the right to demand that Service Provider's Financing Party and/or any new service provider or successor-in-interest of the rights of Service Provider under the Agreement, cure any and all defaults and provide assurance of future performance under the Agreement.

(5) Prior to a termination of the Agreement, Service Provider's Financing Party or its representatives or invitees or any receiver or other similar official appointed by Service Provider's Financing Party in respect of the Collateral (a "**Receiver**") may enter upon the any Premises of any Facility upon complying with the prior notice requirements, the safety and security conditions and access rules applicable to Service Provider in this Agreement and upon evidence of proper public liability and property insurance with Client appearing as additionally insured, to inspect or remove any or all of the Collateral to be performed by qualified and authorized contractors with corresponding government approvals; provided, however, Service Provider's Financing Party shall promptly repair any damage caused by such removal and restore the relevant Facility to their original condition, reasonable wear and tear excepted.

iii. Notices of Default. It is the principal obligation of Services Provider to deliver to Service Provider's Financing Party any notices of default received from Client in accordance with this Agreement. Provided that Service Provider has provided Client with accurate and up-to-date Service Provider's Financing Party's notice information in writing, Client will deliver to Service Provider's Financing Party (concurrently with delivery thereof to Service Provider), a copy of each notice of default given by Client under this Agreement. Provided that the failure by Client to provide such notice shall not constitute a breach of the Agreement.

iv. Right to Cure.

(1) The Service Provider's Financing Party, upon receiving copy of a notice of default delivered to Service Provider, shall have right, but not the obligation, to cure the default within the same period granted to Service Provider under this Agreement.

(2) If another person or entity acquires legal or equitable title to or control of Service Provider's assets (in compliance with the Conditions to Assignment) and cures, to the Client's satisfaction, prior to the date of termination or as otherwise specified in this Section 18, all cured defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then Service Provider shall

not be in default under this Agreement, and this Agreement shall continue in full force and effect.

(3) Client acknowledges and agrees that Service Provider may change the Service Provider's Financing Party at any time, in its sole discretion, and Client will abide by such new contact information and payment directions provided it previously receives written notification therefore from Service Provider with accurate and up-to-date information on the new Service Provider's Financing Party and upon such new Service Provider's Financing Party respecting all of the terms of this Agreement and the proposed assignment and collateral assignment agreements entered by the original Service Provider's Financing Party.

19. Confidentiality.

a. Confidentiality. Parties acknowledge that Client is a public entity and subject to California Government Code § 6250-6270 (California Public Records Act). Any information arising from this Agreement is subject to release in response to public information requests pursuant to these statutes.

20. Miscellaneous Provisions.

a. Choice of Law. The law of the state where the All Systems are located shall govern this Agreement without giving effect to conflict of laws principles.

b. Arbitration and Attorneys' Fees. Any dispute arising from or relating to this Agreement shall be arbitrated in Sonoma County. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing Party shall be entitled to recover reasonable attorneys' fees and costs from the other Party for any dispute arising out of this Agreement.

c. Notices. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document. Please note that Notices of Default should be sent to Service Provider's Financing Department, as set forth in Section 18(d)(iii).

d. Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7(h) (No Warranty), Section 13 (Representations and Warranties), Section 14(b) (Insurance Coverage), Section 16 (Indemnification and Limits of Liability), Section 19 (Confidentiality), Section 20(a) (Choice of Law), Section 20(b) (Arbitration and Attorneys' Fees), Section 20(c) (Notices), Section 20(g) (Comparative Negligence), Section 20(h) (Non-Dedication of Facilities), Section 20(j) (Service Contract), Section 20(k) (No Partnership), Section 20(l) (Full Agreement, Modification, Invalidity, Counterparts, Headings) and Section 20(n) (No Third-Party Beneficiaries).

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

f. Right of Waiver. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however, that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Client or Service Provider shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its

rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Service Provider is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Service Provider does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Service Provider shall have the right to terminate this Agreement without further liability, and Service Provider shall remove All Systems, and shall return All Facilities to their prior condition, reasonable wear and tear excepted.

i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Client will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from any System.

k. **Relationship of Parties.** No provision of this Agreement shall be construed or represented as creating an association, partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

l. **Entire Agreement, Modification, Invalidity, Counterparts, Headings.** This Agreement (together with any Exhibits, written schedules, supplements or amendments) completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. Any amendment, modification or change to this Agreement will be void unless in writing and signed by both parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

n. **No Third-Party Beneficiaries.** Except for assignees and Financing Parties permitted under Section 18, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any third party or entitle any third party to any claim, cause of action, or remedy of any kind.

o. **Client's use of the Premises.** Service Provider shall cause each System to be constructed, installed and operated in a manner that is consistent with this Agreement and that will not unreasonably interfere with Client's use of any Premises.

p. **Service Provider's Violation.** Service Provider shall be responsible for complying with all applicable zoning requirements and applicable laws, rules and regulations. Service Provider shall be responsible for any and all violations incurred against any Premises from operation of a System (other than for violations caused by the actions or inactions of Client).

End of Exhibit 3

Exhibit 4
Form of Easement Agreement

[to be attached]

Exhibit 5
Form of Performance Guarantee

Service Provider shall provide annually to Client energy in an amount that exceeds the Minimum Energy Output Requirement. If Service Provider fails to provide to Client the Minimum Energy Output Requirement, Service Provider shall credit to Client or make a payment to Client in the amount equal to Client's "Reduced Savings" (as further described in the formula at the end of this Exhibit 5) measured as the difference between the amount paid by Client to the Utility for delivered electricity (the "Utility Rate") and the amount Client would have paid to Service Provider, based on the Contract Price, had Service Provider satisfied the Minimum Energy Output Requirement. In the event of casualty event described in Section 14(a) of the Agreement, Service Provider shall be relieved of its obligation to satisfy the Minimum Energy Output Requirement; provided that Service Provider complies with obligations set forth in Section 14(a) of the Agreement.

(a) True-up Term: Satisfaction of the applicable Minimum Energy Output Requirement shall be judged on the basis of the total actual energy output of All Systems for consecutive three (3) Contract Year periods throughout the term of the Agreement as set forth below. The first three (3) Contract Year period for which the Minimum Energy Output Requirement shall commence on the Commercial Operation Date. Subsequent three (3) Contract Year periods for determining whether Service Provider has satisfied the Minimum Energy Output Requirement shall commence on the three (3) year anniversary of the commencement of the prior three (3) Contract Year period.

(b) No later than sixty (60) days after the end of each three (3) year period in which Service Provider's energy output performance is measured, Service Provider shall submit to Client a statement stating whether the total Minimum Energy Output Requirement was satisfied for the prior three (3) Contract Year period. If not satisfied, Service Provider shall state any deficiency and reset the Excess Generation to zero. If the actual energy output for the three (3) Contract Year period exceeds the total Minimum Energy Output Requirement for All Systems, Service Provider shall be deemed to have met the Minimum Energy Output Requirement for that period.

(c) If at the completion of any three (3) Contract Year period, Service Provider has failed to meet the Minimum Energy Output Requirement for such period, Service Provider will pay Client an amount equal to the Reduced Savings within sixty (60) days of the expiration of the three (3) Contract Year period. If Service Provider does not submit payment as required by this Exhibit 5, Client may offset the amount owed for Reduced Savings against any amounts owed by Client to Service Provider.

(d) The Minimum Energy Output Requirement for each Contract Year shall be calculated based on the formula below:

MEOR = FEO x (MGHI/FGHI) x GR

where:

FEO = Forecasted Energy Output is the annual energy production shown in the Helioscope model adjusted by applicable degradation factor

MGHI = Measured Global Horizontal Irradiance (GHI) as measured by the onsite weather station(s) or satellite data

FGHI = Forecasted Global Horizontal Irradiance is the modeled GHI used in the Helioscope model.

GR = Guarantee Rate of 90%

Annual MEOR assuming MGHI is equal to FGHI for each Contract Year (for each System), based on the annual degradation factor at one half of one percent (0.5%). This table can be updated upon mutual agreement of the Parties to reflect an equitable adjustment, on or before Commercial Operation Date, if the actual installed size of All Systems or their design layout is different.

Contract Year	Guaranteed kWh Production (MEOR)
1	6,101,482
2	6,070,975
3	6,040,620
4	6,010,417
5	5,980,365
6	5,950,463
7	5,920,710
8	5,891,107
9	5,861,651
10	5,832,343
11	5,803,181
12	5,774,165
13	5,745,295
14	5,716,568
15	5,687,985
16	5,659,545
17	5,631,248
18	5,603,091
19	5,575,076
20	5,547,201
21	5,519,465
22	5,491,867
23	5,464,408
24	5,437,086
25	5,409,900

RS = (MEOR – AS) x PD

where:

RS = Reduced Savings

MEOR = Minimum Energy Output Requirement as measured in total kWh for the three (3) Contract Year period (as adjusted per clause (d) above)

AS = Actual supplied electricity as measured in total kWh at Service Provider installed metering device for the three (3) Contract Year period.

PD = Price difference between the average Utility Rate and the average Contract Price for the three (3) Contract Year period. The average Utility Rate shall be calculated by dividing total utility charges by total kWh production.

If PD is zero or less, then no Reduced Savings payment is due to Client

Exhibit 6

Project Stabilization Agreement

[to be attached]