ENERGY SERVICES POWER PURCHASE AGREEMENT

APPENDIX E

AGREEMENT NUMBER: ESA-XXX-XX

THIS ENERGY SERVICES PURCHASE AGREEMENT BY AND BETWEEN COUNTY OF LOS ANGELES AND [VENDOR NAME]

FOR THE LICENSED AREAS LOCATED AT

[Location Address]

MONTH YEAR

This Energy Services Purchase Agreement (“Agreement”) and all Exhibits hereto, which are incorporated into this Agreement by reference and made a part hereof, is made and effective this ____ day of ___________, 20XX, (the “Effective Date”) by and between County of Los Angeles (“Purchaser”) and [XXXX] (“Provider”). Purchaser and Provider are sometimes referred to herein as “the Parties.” The Parties agree as follows:

WITNESSETH:

WHEREAS, on [XXXX], the Board of Supervisors adopted a (MA language) resolution with a finding that (i) the anticipated cost to the Purchaser for electrical energy under the proposed Energy Services Purchase Agreements (ESPAs) will be less than the anticipated marginal cost to the Purchaser of energy that would have been consumed by the Purchaser in the absence of those purchases, and (ii) the difference, if any, between the fair rental value for the real property subject to the Agreement (as defined below) and the agreed rent is anticipated to be offset by below-market energy purchases or other benefits provided under the ESPA, pursuant to Government Code section 4217.12.

WHEREAS, Purchaser desires to implement photovoltaic and/or energy storage systems (“Systems”) which will help control energy consumption and costs on a specified number of its properties);

WHEREAS, in connection therewith Provider and its affiliates intend to install, finance, own, maintain and operate Systems on the Licensed Areas;

WHEREAS, concurrently herewith, Purchaser and Provider are entering into that certain Energy Services Purchase Agreement (ESPA) (the "Agreement") pursuant to which Purchaser agrees to grant exclusive and non-exclusive licenses to Provider on and over specified portions of Purchaser's property (the "Licensed Areas");

WHEREAS, Provider desires to sell to Purchaser, and Purchaser desires to purchase from Provider, all of the energy output generated by the System during the Term in accordance with the terms and conditions of this Agreement;

WHEREAS, Purchaser wishes Provider to design, construct, install, own, maintain, repair, replace, inspect, and operate Systems at the Licensed Areas in a configuration to be agreed upon and on premises that shall be provided to Provider pursuant to the Agreement;

WHEREAS, Provider wishes to design, construct, install, own, maintain, repair, replace, inspect, and operate Systems on the Licensed Areas and to sell the System-produced electricity and other services, such as energy storage and microgrids, to Purchaser at prices to be agreed and under the terms and provisions of this Agreement; and

WHEREAS, Purchaser wishes to purchase such electricity and other services from Licensed Areas pursuant to this Agreement;

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

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SECTION 1 - DEFINITIONS

1. Except as specifically provided to the contrary in this Agreement, or unless the context clearly requires otherwise, the capitalized terms in this Agreement (including any Exhibits, attachments, schedules, and appendices) shall have the meanings set forth below.

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

    1.2 "Agreement" means, the Energy Services Purchase Agreement (ESPA).

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

    1.4 "Assignment" has the meaning set forth in Section 5.3.

    1.5 "Bankruptcy Event" means with respect to a Party, that either (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof.

    1.6 "Battery Energy Storage System (BESS)" an electrochemical device that charges (or collects energy) from the grid or a power plant (PV system) and then discharges that energy at a later time to provide electricity or other grid services when needed.

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

    1.8 "Commercial Operation" has the meaning set forth in Section 3.3(b).

    1.9 "Commercial Operation Date" has the meaning set forth in Section 3.3(b).

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

1.11 "Delay Liquidated Damages" means the daily payment of (i) $0.250/day/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of Section 15-Schedules). Any assessed Delayed Liquidated Damages will be deducted from first Energy Services Payment.

1.12 "Disruption Period" has the meaning set forth in Section 4.3.

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

1.14 "Early Termination Fee" means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3 or Section 8.2.

1.15 "Effective Date" has the meaning set forth in the preamble.

1.16 "Energy Services" has the meaning set forth in Section 15-Schedules.

1.17 "Energy Services Purchase Agreement" means each Energy Services Purchase Agreement (including the Schedules and Attachments thereto) that may be entered into between Provider and Purchaser or between their respective Affiliates that incorporates these General Terms and Conditions by reference.

1.18 "Energy Services Payment" has the meaning set forth in Section 15-Schedules.

1.19 "Environmental Attributes" shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, Green-e® products, and any other environmental attributes possessing value or not.

1.20 "Environmental Documents" has the meaning set forth in Section 7.2(f).

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

1.22 "Estimated Remaining Payments" means as of any date, the estimated remaining Energy Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

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

1.24 "Fair Market Value" means, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

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

1.26 "General Terms and Conditions" means these General Terms and Conditions of the Energy Services Purchase Agreement, including all Schedules and Exhibits hereto.

1.27 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 10, subject to extension as set forth in Section 2.2(b).

1.28 "Guaranteed Construction Start Date" has the meaning set forth in Section 10, subject to extension as set forth in Section 2.2(b).

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

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

1.31 "Hazardous Materials" means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

1.32 "Improper Consideration" has the meaning set forth in Section 8.1(a)(iv).

1.33 "Initial Term" has the meaning set forth in Section 2.

1.34 "Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) at the Premises.

1.35 "Invoice Date" has the meaning set forth in Section 6.2.

1.36 "Liens" has the meaning set forth in Section 7.1(d).

1.37 "License Area" means the portion of the site licensed by Purchaser to Provider to install, operate and maintain the system, as further described in Schedule 6 - Site Diagram

1.38 "Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

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

1.40 "Option Price" has the meaning set forth in Section 2.3(i).

1.41 "Party" or "Parties" has the meaning set forth in the preamble.

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

1.43 "Photovoltaic System" a photovoltaic system, also PV system or solar power system, is an electric power system designed to supply usable solar power by means of photovoltaics.

1.44 "Power Purchase Agreement" (PPA) is a financial arrangement in which a third-party developer owns, operates, and maintains a System, and a host purchaser agrees to site the system on its property and purchases the System's electric output for a predetermined period.

1.45 "Pre-existing Environmental Conditions" means any: (i) violation of, breach of or non-compliance with any Environmental Laws with respect to the Premises that first existed, arose or occurred on or prior to Provider's commencement of construction at the Premises and (ii) the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Provider's commencement of construction at the Premises.

1.46 "Premises" means the premises described in Schedule 1 of Section 15-Schedules. The Premises includes the entirety of any structures and underlying real property located at the address in Schedule 1 of Section 15-Schedules.

1.47 "Provider" has the meaning set forth in the preamble.

1.48 "Provider Default" has the meaning set forth in Section 8.1(a).

1.49 "Purchase Date" means the first Business Day that occurs after the applicable purchase date set forth in Schedule 3 of Section 15-Schedules.

1.50 "Purchaser" has the meaning set forth in the preamble.

1.51 "Purchaser Default" has the meaning set forth in Section 8.2(a).

1.52 "Renewal Term" if applicable, has the meaning set forth in Section 2.1

1.53 "Site-Specific Requirements" means the site-specific information and requirements as may be set forth in Section 15-Schedules.

1.54 "Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.

1.55 "Storage Energy Capacity" means the energy capacity of energy storage as measured in kWh.

1.56 "Storage Power Capacity" means the power capacity of energy storage as measured in kW.

1.57 "System" has the meaning set forth in Schedule 1 of Section 15-Schedules.

1.58 "System-based Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of Section 15-Schedules and all other related subsidies and incentives.

1.59 "System Operations" means Provider's operation, maintenance and repair of the System performed by Provider or for Provider (by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed) in accordance with the requirements herein.

1.60 "Term" means the Initial Term, and the subsequent Renewal Term(s), if any.

1.61 "Term Year" means a twelve (12) month period beginning on the first day of the Term and each successive twelve (12) month period thereafter.

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

1.63 "WREGIS" means the Western Renewable Energy Generation Information System

SECTION 2 - TERM AND TERMINATION

2.1 Term. The Term of this Agreement shall commence on the Commercial Operating Date and shall continue for a period of twenty xx (2-) years from the Commercial Operating Date unless terminated earlier pursuant to the provisions in this Agreement. The date on which this Agreement terminates shall be referred to as the "Termination Date." The grant of the License Area by Purchaser to Provider to use the Licensed Areas shall extend to the date that is 180 days following the earlier of (i) the end of the Term and (ii) the early termination of the Agreement.

This Agreement shall terminate upon its expiration or earlier termination without any further notice thereof by Purchaser and no possession by Provider of the Licensed Areas shall be permitted without Purchaser's prior written approval. Subject to the terms and conditions of Section 2 (2.4), any possession by Provider after expiration or early termination of this Agreement shall not constitute a renewal or extension of this Agreement or give Provider any rights in or to Licensed Areas or any portion thereof.

2.2 Early Termination.

(a) Termination for Convenience. As outlined in Section 8.41 of the Energy Services Master Agreement, Purchaser may terminate this Agreement, when such action is deemed by the Purchaser, in its sole discretion, to be in its best interest. Termination of this Agreement shall be effected by sixty (60) days' prior written notice of termination to Provider. If Purchaser terminates the Agreement prior to the Expiration Date of the Initial Term, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of Section 15-Schedules (Schedules), and Provider shall cause the System to be disconnected and removed from the Premises in accordance with Section 2.4. Upon Purchaser's payment to Provider of the Early Termination Fee, this Agreement shall terminate automatically. Upon receipt of a notice of termination and except as otherwise directed by the Purchaser, the Provider shall immediately:

- Stop work under the Work Order or under this Master Agreement, as identified in such notice;
- Transfer title and deliver to Purchaser (County) all completed work and work in process; and
- Complete performance of such part of the work as shall not have been terminated by such notice.

As outlined in Section 8.37 of the Energy Services Master Agreement, all material including books, records, documents, or other evidence bearing on the costs and expenses of the Provider under this Agreement shall be maintained by the Provider in accordance with Los Angeles County's Record Retention and Inspection/Audit Settlement policies.

(b) Purchaser may (i) if Provider fails to commence construction by the Guaranteed Construction Start Date, be entitled to Delay Liquidated Damages not to exceed \$22.5/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of the Schedules), (ii) terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee, if Provider fails to commence construction of the System by the date that is ninety (90) days after the Guaranteed Construction Start Date, or (iii) if Provider fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, be entitled (as its sole remedy) to Delay Liquidated Damages not to exceed $15/kW (DC) of the estimated nameplate capacity of the System (as set forth in Schedule 1 of the Schedules), plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Purchaser to return its Premises to its condition prior to commencement of the Installation Work. Further, Purchaser may terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee, if Provider fails to commence Commercial Operation by the date that is sixty (60) days after the Guaranteed Commercial Operation Date. The Guaranteed Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if any of the following occurs: (x) notwithstanding Provider's commercially reasonable efforts, interconnection approval is not obtained within sixty (60) days after the Effective Date, provided that interconnection applications are submitted within 45 days of the later of (a) the Effective Date and (b) finalization of the System layout, (y) a Force Majeure Event occurs or for any delays by the Local Electric Utility or (z) an occurrence of any other unforeseeable event outside of Provider's reasonable control, provided that Provider makes reasonable efforts to mitigate the impact of such events on the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date (as applicable). Any such extension pursuant to subsection (z) shall be subject to the approval of Purchaser which shall not be unreasonably withheld, conditioned or delayed.

2.3 Purchase Option.

(i) On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the "Option Price") equal to the LESSOR of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Schedules. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser's intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser's notice, Provider shall specify the Option Price, and provide all calculations and assumptions supporting said Option Price to Purchaser. Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.3(ii)), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider's Financing Party, as applicable, for payments under this Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, this Agreement shall terminate automatically. Payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of this Agreement shall be applicable as if Purchaser had not exercised any option to purchase the System.

(ii) Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3(i) is equal to the Fair Market Value (as determined and demonstrated by supporting documentation provided by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, resale markets for such systems and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error; however, if Purchaser in good faith disputes the valuation made by the appraiser, Purchaser shall have the right to retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3(i); otherwise, the Parties shall equally share such cost.

2.4 Removal of System at Expiration. Subject to Purchaser's exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of this Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date. The Premises shall be returned to its original condition, except for System mounting pads or other support structures on roof-mounted systems only, and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Provider's reasonable cost.

2.5 Conditions Prior to the Commercial Operation Date.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) provide notice that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, including but not limited to Provider's restoration of the Premises in accordance with Section 2.4:

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

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

(iii) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

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

(v) Provider has not received: (1) a fully executed a license in the form of these General Conditions from the owner of the Premises, (2) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (3) such other documentation as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(i) to ensure that Provider will have access to the Premises throughout the Term.

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

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

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

(b) If any of the conditions set forth in Section 2.5(a) are partly or wholly unsatisfied, and Provider wishes to revise the information in the Schedules, then Provider may propose modifications to the Schedules for acceptance by Purchaser. If Purchaser does not accept such modified Schedules, Provider may terminate this Agreement as provided in Section 2.5(a) and shall restore the Premises in accordance with Section 2.4. If Purchaser accepts such revised Schedules, such Schedules shall be deemed an amendment of this Agreement, and this Agreement shall remain in force and effect upon execution by both Parties.

2.6 Co-Located Systems. With respect to any Systems that are co-located at the same Premises and connected to the same meter, the Parties acknowledge that the Systems are intended to be owned and operated as one integrated system, and that the Energy Services Payment (a) represents the added value of integrating the Systems to enable Provider's delivery of the Energy Services pursuant to the Agreements when needed by Purchaser, and (b) is a component part of the total consideration payable to Provider in exchange for Provider's comprehensive duties under this Agreement and the Agreement(s) related to the other co-located System(s). Accordingly, the Parties further agree (x) to treat the Systems as one integrated system for all purposes, and (y) that any right or option that is exercised with respect to the System or this Agreement, whether in respect of early termination, purchase option or otherwise, shall also be exercised with respect to the Agreement(s) related to the other co-located System(s).

SECTION 3 - CONSTRUCTION, INSTALLATION, AND TESTING OF SYSTEM

3.1 Installation Work. Provider will cause the System, by using one or more qualified subcontractors as outlined in the Energy Services Master Agreement, Section 8.39, holding the appropriate licenses required in the jurisdiction where the System will be installed; to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Schedules and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.2 Approvals; Permits. Purchaser shall assist Provider in obtaining all necessary consents, approvals and permits required to perform Purchaser's obligations under this Agreement, including but not limited to those related to the Local Electric Utility, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract or CCR.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by providers of Energy Services similar to those provided by the System in the United States. Provider shall provide Purchaser with reasonable advanced notice of such testing and shall permit Purchaser or Purchaser's representative to observe such testing. Purchaser's observation of such testing shall not be construed as or deemed an approval of such testing or test results.

(b) If the results of such testing indicate that the System is capable of providing the Energy Services, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility ("Commercial Operation"), then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date".

3.4 Permitted Use.

(c) As provided in Schedule 6, Purchaser grants to Provider a nonexclusive license to use the Licensed Areas on or about the Site for the construction, maintenance, operation, examination, testing, measuring, inspecting and removal of the System, including Meters, for the production, transformation, transmission and sale of solar photovoltaic generated Electricity, Capacity Products, and for no other use or purpose (the "Permitted Use"), which license shall not be revocable by Purchaser during the Term except as a result of Purchaser's valid exercise of one or more of the Purchaser termination rights under this Agreement.

3.5 Limitation on Use.

(d) Provider shall not permit or suffer any use of the Site or Licensed Areas or any part thereof by others or provide the System for the use by others without first obtaining Purchaser's written consent except as it relates to Permitted Use. Provider is only to use the Licensed Areas for the Permitted Use. No change in Permitted Use may be made by Provider without the prior written approval of Purchaser.

SECTION 4 - SYSTEM OPERATIONS

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, any repair or maintenance costs incurred by Provider as a result of Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed at the Premises. Such meter(s) shall meet the general commercial standards of the solar photovoltaic industry or the required standards of the Local Electric Utility.

4.2.1 Meter Testing.

(a) Provider shall provide certificates of calibration for all meters prior to the time of their installation, no meter will be placed in service for which Provider has not provided certificates of calibration. Provider shall test or arrange for all meters to be tested in accordance with the meter manufacturer's recommendations. Provider shall bear all costs and expenses associated with each meter testing. Purchaser shall be notified at least ten (10) days in advance of such testing and shall have the right to be present during such tests. Provider shall provide Purchaser with detailed written results of all meter tests.

(b) Provider shall test or arrange for meter inspection and testing bi-annually when performing System operations and maintenance.

4.2.2 Cost of Meter Repair.

(a) If meter testing, as described above demonstrates that a meter was operating outside of its allowable calibrations (+/- 2%), then Provider will pay for the cost of repairs or replacement necessary to restore a meter to proper working order.

(b) If a meter is found to be inaccurate by more than two percent (2%), invoices for the prior six (6) months or from the last date such meter was registering accurately, whichever period is less, shall be examined adjusted to reconcile the discrepancy and payment for the amount of the adjustment issued by the appropriate party within 45 days if invoices show discrepancy and both parties agree, except that Purchaser shall not be obligated to pay interest on any amount found to be due because a meter was operating outside of its allowable calibration (+/- 2%).

4.2.3 Meter Data. Provider shall gather and maintain the data from all meters, including but not limited to, interval data registered at least once every fifteen (15) minutes ("Meter Data"), and shall make such Meter Data promptly available to Purchaser at Purchaser's request. Provider shall maintain Meter Data from the beginning of operations through termination and will provide any duration of Meter Data requested by Purchaser. Provider shall give access to Purchaser means of real time monitoring through a dashboard web-based type system.

4.3 System Disruptions. In the event that (a) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (b) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Energy Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period and any reduced System-based Incentives, if applicable, during the Disruption Period. For the purpose of calculating Energy Services Payments and lost revenue for such Disruption Period, Energy Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). Notwithstanding the foregoing, Purchaser shall be entitled to exercise its rights under Section 13.3 (Allowed Disruption Time).

SECTION 5 - TITLE TO SYSTEM

5.1 Throughout the duration of this Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.2 Environmental Attributes and System-Based Incentives. Purchaser's purchase of Energy Services includes Environmental Attributes but does not include System-based incentives. System-based Incentives shall be owned by Provider or Provider's financing party for the duration of this Agreement. Purchaser disclaims any right to System-based Incentives based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.2. During the Term, Provider shall establish and maintain a WREGIS account to register and track Renewable Energy Certificates (RECs) associated with generation produced by the System or assist Purchaser to register credits to an existing County WREGIS account. Provider will provide Purchaser access to the WREGIS account and provide an annual report to Purchaser on the status of the RECs.

5.3 <u>Assignment by Provider</u>. Provider shall not sell, transfer or assign (collectively, an "<u>Assignment</u>") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; *provided*, Purchaser agrees that Provider may assign this Agreement without the consent of the Purchaser to an Affiliate of Provider or any party providing financing for the System. In the event that Provider identifies a secured Financing Party in the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in this Agreement of these General Terms and Conditions and agrees to provide such estoppels, acknowledgments and opinions of counsel as Provider may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 5.1. Any Assignment by Provider without obtaining the prior written consent and release of Purchaser, when such consent is required by this Section 5.1, shall not release Provider of its obligations hereunder.

5.4 <u>Acknowledgment of Collateral Assignment</u>. In the event that Provider identifies a secured Financing Party in the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) The collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under this Agreement, as consented to under Section 5.1 of this Agreement.

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

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

Any Financing Party shall be an intended third- party beneficiary of this Section 5.2.

5.5 <u>Assignment by Purchaser</u>. Purchaser shall not assign this Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

SECTION 6 - PRICE AND PAYMENT

6.1 Consideration. Purchaser shall pay to Provider a monthly Energy Services Payment for the Energy Services provided during each calendar month of the Term as set forth in this agreement

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Energy Services Payment in respect of the immediately preceding month. The last invoice shall include Energy Services provided only through the Termination Date of this Agreement. Invoices shall state, at a minimum, (i) the amount of actual electricity produced by the System and delivered to the delivery point during the invoice period (if applicable), (ii) the rates applicable to, and any charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser (iv) flat monthly lease amount, if applicable, as outland in this agreement.

SECTION 7 - GENERAL COVENANTS

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

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises. In the event of unreasonable damage to the Premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair said Premises to the condition existing prior to such damage.

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

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

(e) System Condition. Provider shall take all actions reasonably necessary, including but not limited to repair and maintenance, to ensure that the System is capable of operating at a commercially reasonable continuous rate throughout the Term.

(f) Environmental Indemnification by Provider. Provider shall indemnify, hold harmless and defend Purchaser Indemnified Parties from and against all claims, pay costs and expenses, and conduct all actions required under Environmental Laws in connection with the deposit, release, or spill of any Hazardous Materials at, on, above, below or near the Premises by Provider. In no event shall Provider be responsible for the existence of any Hazardous Materials at the Premises prior to the Effective Date. Provider shall promptly notify Purchaser if it becomes aware of any Hazardous Materials, or any deposit, spill, or release of any Hazardous Materials at, on, above, below or near the Premises.

(g) Production Data. Provider shall provide Purchaser with access to System production data in electronic format, such as tabular Excel or csv with each production unit in a separate cell by granting Purchaser access to a web portal.

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

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (ii) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. In the event of damage to Purchaser's premises caused by, or as the result of, the System, Provider shall, at its sole cost, repair said premises to the condition existing prior to such damage.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Provider. Purchaser shall provide to Provider copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Provider or to which Provider is a party.

(d) Access to Premises.

(i) Purchaser hereby grants to Provider a revocable non-exclusive license coterminous with the Term containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance and removal of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring; provided, with respect to Provider's access to the Site, such license shall be subject to conditions or limitations for the protection of minor students that are imposed generally on commercial contractors by Purchaser or by Applicable Law. If Provider's financing structure requires that Purchaser enter into a license agreement directly with Financing Party, Provider shall enter into such an agreement which shall be in a form set forth by Provider and which contain substantially the same rights as set forth in this Section 7.2(d). Access to the facility shall be restricted to the facility and areas immediately adjacent to where new equipment is being installed and areas that do not conflict with facility activities. All areas not immediately involved in the project shall be off-limits to the Provider's employees and subcontractors. Personnel involved in the installation shall not wander the facility or enter areas except where equipment is installed.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to provide for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling. Subject to Purchaser's indemnity obligations set forth herein, Purchaser shall have no liability whatsoever in connection with personal property or equipment of Provider or Provider's employees, consultants, contractors, subcontractors, and vendors. Provider shall be solely responsible for the safety and security of Provider's employees, consultants, contractors, subcontractors, and vendors, as well as any personal property, including but not limited to, any tools, materials, and equipment of such parties used or stored on the Premises. Space must be approved by County in advance.

(f) Environmental Documents. On or before the Effective Date of each Schedule, Purchaser shall identify and set forth in each Section of the Schedules, and unless previously delivered, Purchaser shall, to the extent the same are known and in the possession or control of Purchaser, deliver to Provider copies of all reports, agreements, plans, inspections, tests, studies or other materials concerning the presence of Hazardous Materials at, from or on the Premises including, but not limited to, soil reports, design drawings, environmental reports, sampling results or other documents relating to Hazardous Materials that have been identified or may be present on, in or under the Premises (collectively, the "Environmental Documents"). Thereafter, Purchaser agrees to provide copies of any new Environmental Documents within ten (10) days of receipt of same. Purchaser hereby agrees to furnish such other documents in Purchaser's possession or control with respect to Governmental Approvals compliance with Environmental Law or Hazardous Materials with respect to the Premises as may be reasonably requested by Provider from time to time.

7.3 Insurance

INDEMNIFICATION AND INSURANCE REQUIREMENTS: During the term of this Agreement, the following indemnification and insurance requirements shall be in effect.

I INDEMNIFICATION

The Provider shall indemnify, defend and hold harmless the Purchaser, from and against any and all liability, loss, injury, or damage including (but not limited to) demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Provider's repair, maintenance and other acts and omissions arising from and/or relating to the Provider's use of the Premises.

The Purchaser shall indemnify, defend and hold harmless the Provider from and against any and all liability, loss, injury, or damage including (but not limited to) demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Purchaser's repair, maintenance and other acts and omissions arising from and/or relating to the Purchaser's ownership of the Premises.

II GENERAL INSURANCE PROVISIONS - PROVIDER REQUIREMENTS

Without limiting the Provider's indemnification of Purchaser and during the term of this Agreement, and until all of its obligations pursuant to this Agreement have been met, Provider shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Agreement. These minimum insurance coverage terms, types, and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Provider pursuant to this Agreement. The Purchaser in no way warrants that the Required Insurance is sufficient to protect the Provider for liabilities which may arise from or relate to this Agreement.

Evidence Of Coverage & Notice To Purchaser

- Certificate(s) of insurance coverage (Certificate) satisfactory to Purchaser, and a copy of an Additional Insured endorsement confirming Purchaser and its Agents (defined below) has been given Insured status under the Provider's General Liability policy, shall be delivered to Purchaser at the address shown below and provided prior to the start day of this Agreement.
- Renewal Certificates shall be provided to Purchaser not less than 10 days prior to Provider's policy expiration dates. The Purchaser reserves the right to obtain complete, certified copies of any required Provider insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Provider identified in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding twenty-five thousand ($25,000.00) dollars, and list any Purchaser required endorsement forms.
- Neither the Purchaser's failure to obtain, nor the Purchaser's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Provider, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

- Certificates and copies of any required endorsements and notices of cancellation shall be delivered to:

County of Los Angeles
Internal Services Department,
Contracting Division
1100 North Eastern Avenue
Los Angeles, CA 90063
Attention: ISD Contract Manager

Provider also shall promptly notify Purchaser of any third-party claim or suit filed against Provider which arises from or relates to this Agreement and could result in the filing of a claim or lawsuit against Provider and/or Purchaser.

Additional Insured Status & Scope of Coverage

The Purchaser, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively Purchaser and its Agents), shall be provided additional insured status under Provider's General Liability policy with respect to liability arising from or connected with the Provider's acts, errors, and omissions arising from and/or relating to the Provider's operations on and/or its use of the premises. Purchaser's additional insured status shall apply with respect to liability and defense of suits arising out of the Provider's acts or omissions, whether such liability is attributable to the Provider or to the Purchaser. The full policy limits and scope of protection also shall apply to the Purchaser as an additional insured, even if they exceed the Purchaser's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

Cancellation of or Changes In Insurance

Provider shall provide the Purchaser with, or Provider's insurance policies shall contain a provision that the Purchaser shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage, or policy period. The written notice shall be provided to the Purchaser at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the Purchaser, upon which the Purchaser may suspend or terminate this Agreement.

Failure To Maintain Insurance

Provider's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which Purchaser immediately may suspend or terminate this Agreement. Purchaser, at its sole discretion, may obtain damages from Provider resulting from said breach. Alternatively, the Purchaser may purchase the Required Insurance and without further notice to Provider, pursue Provider reimbursement.

Insurer Financial Ratings.

Insurance is to be provided by an insurance company authorized to do business in California and acceptable to the Purchaser, with an A.M. Best rating of not less than A:VII, unless otherwise approved by the Purchaser.

Provider's Insurance Shall Be Primary

Provider's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Purchaser. Any Purchaser maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Provider coverage.

Waiver Of Subrogation

To the fullest extent permitted by law, the Provider hereby waives its and its insurer(s) rights of recovery against Purchaser under all required insurance policies for any loss arising from or related to this Agreement. The Provider shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

Deductibles And Self-Insured Retentions (Sirs)

Provider's policies shall not obligate the Purchaser to pay any portion of any Provider deductible or SIR. The Purchaser retains the right to require Provider to reduce or eliminate policy deductibles and SIRs as respects the Purchaser, or to provide a bond guaranteeing Provider's payment of all deductibles and SIRs, including all related claims investigation, administration, and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

Claims Made Coverage

If any part of the Required Insurance is written on claims-made basis, any policy retroactive date shall precede the start date of this Agreement. Provider understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination, or cancellation.

Application Of Excess Liability Coverage

Provider may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Separation Of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

Purchaser Review And Approval Of Insurance Requirements

The Purchaser reserves the right to review and adjust the Required Insurance provisions, conditioned upon Purchaser's determination of changes in risk exposures.

III INSURANCE COVERAGE TYPES AND LIMITS

Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming Purchaser and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$ 2 million
Products/Completed Operations Aggregate:	$ 2 million
Personal and Advertising Injury:	$ 1 million
Each Occurrence:	$ 1 million

Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than $1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Provider's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If applicable to Provider's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

Commercial Property Insurance. Such insurance shall:

- Provide coverage for Purchaser's property and any improvements and betterments; this coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form CP 10 30). The County and its Agents shall be named as an Additional Insured and Loss Payee on Provider's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.
- Be written for the full replacement cost of the property, with a deductible no greater than $250,000 or 5% of the property value, whichever is less. Insurance proceeds shall be payable to the Provider and Purchaser as their interests may appear.

SECTION 8 - DEFAULT

8.1 Provider Defaults and Purchaser Remedies.

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

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

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount;

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

(iv) Provider has offered or given consideration, in any form, either directly or through an intermediary, to any Purchaser officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment or extension of this Agreement or the making of any determinations with respect to the Provider's performance pursuant to this Agreement, in violation of Los Angeles County – Board of Supervisors Policy Manual. Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts ("Improper Consideration").

(b) Purchaser's Remedies. If a Provider Default described in Section 8.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 8, Purchaser may terminate this Agreement with no penalty or liability whatsoever, including but not limited to the Early Termination Fee, and exercise any other remedy it may have at law or equity or under this Agreement.

8.2 Purchaser Defaults and Provider's Remedies.

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

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

(ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, such longer cure period not to exceed ninety (90) days; and

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

(b) Provider's Remedies. If a Purchaser Default described in Section 8.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee set forth on Schedule 3, in either Column 1 or Column 2, at the Purchaser's sole option, of, and (B) Provider may exercise any other remedy it may have at law or equity or under this Agreement.

8.3 Cross Default. With respect to any Systems that are co-located at the same Premise, if a Party defaults under this Agreement, it shall also be a default of such Party under the Agreement(s) related to the other co-located System(s); *provided*, a cure of the original default shall be a cure of any such cross default. In the event of a cross default, the non-defaulting Party shall be entitled to exercises its rights with respect to this Agreement and all such other Agreements, including terminating all such Agreements and, if Provider terminates one or more Agreements due to a

Purchaser Default, Purchaser shall pay the Early Termination Fees for all such terminated Agreements.

8.4 Removal of System. Upon any termination of this Agreement pursuant to this Section 8 and payment of the Early Termination Fee in Column 1 of Schedule 3 (if applicable), Provider will remove the System pursuant to Section 2.4 hereof.

SECTION 9 - MISCELLANEOUS

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

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

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

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

9.5 Schedules. The following Schedules hereto are hereby incorporated into this Agreement:

Schedule 1	Description of the Premises, System and Subsidy
Schedule 2	Energy Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Milestones
Schedule 6	Site Diagram
Schedule 7	Energy Storage System

SECTION 10 - MILESTONE DATES

10.1 The Guaranteed Construction Start Date is (XXX) days from Effective Date provided that the Local Electric Utility is prepared to begin its construction on any required utility, (distribution or transmission), upgrades, if any. In the event that the Local Electric Utility is not prepared to commence construction on required upgrades, if any are required, Provider will be allowed a day for day extension to the Guaranteed Construction Start Date, as defined in the

Definitions Section 1. Milestones in Schedule 6 list key functions and timelines and Schedule 6 shall be updated, and copies sent to the Project Manager, as dates change.

10.2 The Guaranteed Commercial Operation Date is (XXX) days from Guaranteed Construction Start Date.

SECTION 11 - PURCHASE REQUIREMENT

11.1 Energy Services Payment. "<u>Energy Services</u>" means the supply of electrical energy output from the System. Purchaser agrees to purchase one hundred percent (100%) of the electrical energy output from the System and made available by Provider to Purchaser during each relevant month of the Term, up to a maximum of one hundred and ten percent (110%) of Estimated Annual Production, as defined in Schedule 4. While the Energy Services are calculated and billed on a per kWh basis only as set forth in Schedule 2 of these Schedules, there are other Energy Services with benefits to the Purchaser that are delivered within the per kWh PPA or monthly ESA fees – and no additional payments will accrue on the Purchaser.

SECTION 12 – NET ENERGY METERING

12.1 The Parties acknowledge that the pricing assumes Net Energy Metering (NEM) 2.0 for the Initial Term. If (i) Provider fails to submit interconnection applications by [X], or (ii) prior to the Commercial Operation Date, (A) Provider fails to keep such interconnection applications in good standing such that the System would not be eligible for NEM 2.0, or (B) the CPUC issues a decision such that the System would not be eligible for NEM 2.0 grandfathering for at least twenty-five (25) years, Purchaser may terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee. The foregoing shall not apply to the extent Provider's failure is caused by an act or omission by Purchaser in connection with Provider's submittal of interconnection applications.

Provided, however, that in the event of a change in Applicable Law that occurs after the Commercial Operation Date and results in a loss of NEM 2.0 grandfathering, Purchaser shall have no such termination right. Provided further that Purchaser shall ensure any correspondence with the Local Electric Utility regarding the tariff and changes to the interconnection agreement are promptly shared with Provider.

SECTION 13 - ESTIMATED ANNUAL PRODUCTION

13.1 The annual estimate of electricity generated by the system for each year of the initial term is set as forth in Schedule 4 of the Schedules ("<u>Estimated Annual Production</u>"). Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will provide a statement to Purchaser that shows the actual annual kWh production from the System for the Term Year, the Estimated Annual Production, and the Minimum Guaranteed Output (defined below).

13.2 <u>Minimum Guaranteed Output</u>. If the System fails to generate at least ninety-five percent (95%) of the Estimated Annual Production for a full-Term Year (such amount, the "<u>Minimum Guaranteed Output</u>"), other than as a result of the acts or omissions of Purchaser or the Local Electric Utility (including a Disruption Period), or an Event of Force Majeure, Provider shall credit Purchaser an amount equal to Purchaser's Lost Savings on the next invoice or invoices during the following Term Year. The formula for calculating Lost Savings for the applicable Term Year is as follows:

AE = Actual Electricity, as measured in total kWh, delivered by the System for the Term Year plus the estimated lost energy production during a Disruption Period.

RV = (ATP - kWh Rate)

ATP = Average tariff price, measured in $/kWh, for the Term Year paid by Purchaser with respect to the Premises. This price is determined by dividing the total cost for delivered electricity, including all charges associated with such electricity howsoever named, including, without limitation, charges for distribution, transmission, demand, and systems benefits, paid to the Local Electric Utility during the applicable Term Year by the total amount of delivered electricity by the electric utility during such Term Year.

kWh Rate = the kWh Rate in effect for the applicable Term Year(s), measured in $/kWh.

If the RV is zero or less, then no Lost Savings payment is due to Purchaser. Any Lost Savings payment shall occur no later than sixty (60) days after the end of the Term Year during which such Lost Savings occurred.

13.3 Allowed Disruption Time. Notwithstanding the provisions in Section 4.3 of the Energy Services Agreement to the contrary, during years 4 through 20 (but not years 1 through 3) of the Term, Purchaser shall be afforded a one-time allocation of fifteen (15) days which may be used consecutively or in separate periods of at least twenty-four (24) hours each ("Allowed Disruption Time") during which the System shall be rendered non-operational. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue. Provider shall be credited for the estimated lost production the System would have produced during such Allowed Disruption Time toward satisfaction of its Minimum Guaranteed Output, as set forth in Section 13.2, such estimated lost production to be calculated in the same manner as set forth in Section 4.3.

SECTION 14 – AMENDMENTS, DISRUPTION UPGRADES, SCOPE, AND SCHEDULE CHANGES

14.1 For any distribution upgrades required or changes to the scope of Installation Work made pursuant to Schedule 1 of Schedules, the Parties may execute an acknowledgment in the form of an Amendment detailing (i) the description of the distribution upgrades or change in scope of the Installation Work (ii) the amount of the adjustment in the kWh Rate and Early Termination Fee that corresponds to such costs, if any (iii) changes to the Estimated Annual Production in Schedule 4, if any, and (iv) any change to the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date resulting from such upgrades or scope changes;

14.2 For any day-for-day extensions made pursuant to Section 2.2(b) of the General Conditions, the Parties may execute an acknowledgment in the form of an Amendment detailing

(i) the circumstances that warrant such day-for-day extension and (ii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date;

14.3 For any extensions that are not made pursuant to Section 2.2(b) of the General Conditions, Provider may request extensions to the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date to the extent that Provider can demonstrate to Purchaser that Provider is seeking such extension for good cause. Purchaser in its sole discretion may approve such extension(s) by executing an acknowledgment in the form of an Amendment which Provider details (i) the circumstances for which Provider deems good cause for such extension(s), (ii) the actions that Provider is taking to complete the System on a schedule agreeable to the Purchaser and (iii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date.

For the avoidance of doubt, Purchaser designates [Insert Post(s) of person(s) authorized to Execute] as authorized to execute Amendments provided the terms of such acknowledgment comply with this Section 11.

1. <u>Sunlight Access</u>. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System.

2. <u>Use of System</u>. Purchaser will not use electrical energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

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

PROVIDER: **XXXX, LLC**	**PURCHASER:** **County of Los Angeles**
By:__________________________	By:_________________________
Name:	Name:
Title:	Title:
Date:	Date:

SECTION 15 – SCHEDULES

SCHEDULE 1 – DESCRIPTION OF THE PREMISES, SYSTEM AND SUBSIDY

A. Premises	**ADDRESS**
Site diagram attached: **Energy Storage:** **Microgrid Option:**	☐ Yes ☐No ☐ Yes ☐No ☐ Yes ☐No
B. Description of System	Behind the meter, grid interconnected, canopy mounted solar.
Solar System Size:	XX kW (DC) (this is an estimate (and not a guarantee) of the System size)
Energy Storage Size:	
C. Anticipated Subsidy or Rebate	$0

SECTION 15 – SCHEDULES

SCHEDULE 2 – ENERGY SERVICES PAYMENT

Purchaser shall pay to Provider a monthly payment (the "Energy Services Payment") for the Energy Services provided by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate and/or flat monthly lease payment as outlined in this agreement if applicable.

The "Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment on either the generating facilities in the System or on the combination of generating and energy storage facilities behind a Purchaser-specified point of metering during each calendar month of the Term.

The kWh Rate with respect to the System under this Agreement shall be in accordance with the following schedule:

ESA Rate Table (up to 25 years)

Term Year	**kWh Rate ($/kWh)**	**Term Year**	**$/kWh Rate ($/kWh)**	**Term Year**	**kWh Rate ($/kWh)**
1	$0.XXX	11	$	21	
2	$0.XXX	12	$	22	
3	$	13	$	23	
4	$	14	$	24	
5	$	15	$	25	
6	$	16	$		
7	$	17	$		
8	$	18	$		
9	$	19	$		
10	$	20	$		

In the case of cost overruns incurred by Provider that are approved by Purchaser, a supplement PPA or ESA amount for each $20,000 of approved cost increase, up to a maximum of $200,000 per geographical area to be used for unforeseen site condition(s). Any Purchaser-approved supplement will be added to the originally approved PPA or ESA amount. The supplement amount will be applied only to the facility incurring the extra approved cost. If the supplement amount used is less than any $20,000 increment, such supplement amount will be prorated on a straight-line basis

SECTION 15 – SCHEDULES

SCHEDULE 2 – ENERGY SERVICES PAYMENT (Cont.)

<u>CONTINGENCY ESA Rate Table (pr $20,000)</u>

Term Year	**kWh Rate ($/kWh)**	**Term Year**	**$/kWh Rate ($/kWh)**	**Term Year**	**kWh Rate ($/kWh)**
1	$0.XXX	11	$	21	
2	$0.XXX	12	$	22	
3	$	13	$	23	
4	$	14	$	24	
5	$	15	$	25	
6	$	16	$		
7	$	17	$		
8	$	18	$		
9	$	19	$		
10	$	20	$		

SECTION 15 – SCHEDULES

SCHEDULE 3 – EARLY TERMINATION FEE

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

Early Termination Occurs in Year:	**Column 1 Early Termination Fee where Purchaser does not take Title to the System ($/Wdc including costs of removal)**
1*	$
2	$
3	$
4	$
5	$
6	$
7	$
8	$
9	$
10	$
11	$
12	$
13	$
14	$
15	$
16	$
17	$
18	$
19	$
20	$
21	$
22	$
23	$
24	$
25	$0.00

Purchase Date Occurs on the 91st day following: (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date)	**Column 2 Early Termination Fee where Purchaser takes Title to the System ($/Wdc, does not include costs of removal)**
	--
	--
	--
	--
	--
5th Anniversary	$
6th Anniversary	$
7th Anniversary	$
8th Anniversary	$
9th Anniversary	$
10th Anniversary	$
11th Anniversary	$
12th Anniversary	$
13th Anniversary	$
14th Anniversary	$
15th Anniversary	$
16th Anniversary	$
17th Anniversary	$
18th Anniversary	$
19th Anniversary	$
20th Anniversary	$
21st Anniversary	$
22nd Anniversary	$
23rd Anniversary	$
24th Anniversary	$

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).
*Includes Early Termination prior to the Commercial Operation Date.

SECTION 15 – SCHEDULES

SCHEDULE 4 – ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under this Agreement shall be as follows:

Term Year	**Estimated Production (kWh)**	**Term Year**	**Estimated Production (kWh)**	**Term Year**	**Estimated Production (kWh)**
1		11		21	
2		12		22	
3		13		23	
4		14		24	
5		15		25	
6		16		[redacted]	
7		17			
8		18			
9		19			
10		20			

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System assuming the System size indicated in Schedule 1 and based on initial System designs. Provider may deliver to Purchaser an updated table on or about the Commercial Operation Date based on the actual System size and design.

SECTION 15 – SCHEDULES

SCHEDULE 5 – MILESTONES

Description	Date or Days

SECTION 15 – SCHEDULES

SCHEDULE 6 – SITE DIAGRAM

SECTION 15 – SCHEDULES

SCHEDULE 7 – ENERGY STORAGE SYSTEM

Manufacturer:

Model:

Storage Power Capacity: __kW

Storage Energy Capacity: __kWh

Islanding Capability: Yes or No

Grid Forming Capability: Yes or No

Black Start Capability: Yes or No

Maximum Output that Can Be Sustained for Four (4) Hours: _____ MW

Critical Load that Can Be Sustained: __________________Hrs.

Storage Annual Loss Factor (% Energy Capacity degradation per year): ____%

The Storage Rate shall be:

Contract Year	Storage Rate*

*If not included in PPA rate.

Energy Storage Location at Facility:

Minimum Energy Capacity Available for Daily Cycling:

Term Year	Power Capacity (kW)	Energy Capacity (kWh)	Guaranteed Minimum Energy Capacity Available for Daily Cycling (kWh)
1			
2			
3			
4			
5			
6			
7			

SECTION 15 – SCHEDULES

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