

*Execution Copy*

AMENDED AND RESTATED  
SOLAR ENERGY POWER PURCHASE  
AGREEMENT (CSI)

by and between

ENERGEA FRESNO LLC

and

THE CITY OF FRESNO

August 2022

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## **AMENDED AND RESTATED SOLAR ENERGY POWER PURCHASE AGREEMENT (SGIP)**

This Amended and Restated Solar Energy Power Purchase Agreement (this "Agreement") is made and entered into as of the \_\_\_ day of August, 2022 (the "Effective Date"), by and between Energea Fresno LLC ("Energea" or "System Owner") and The City of Fresno ("Host Customer"). Each of System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

### **RECITALS**

**WHEREAS**, Host Customer owns and controls the Fresno Yosemite International Airport (the "Premises"), which uses Electricity; and

**WHEREAS**, Host Customer desires to reduce its dependence on fossil fuel electric generating resources and to promote the generation of Electricity from solar photovoltaic facilities; and

**WHEREAS**, Host Customer and WorldWater & Solar Technologies Corp. ("WorldWater") entered into the Solar Energy Agreement, dated as of April 10, 2007, as amended and restated as of the date September 28, 2007 (the "SEA"); and

**WHEREAS**, WorldWater has assigned all of its right, title and interest in the SEA to SPP OpCo, LLC ("SPP"), and SPP has accepted such assignment and has assumed the obligations under the SEA on October 5, 2007; and

**WHEREAS**, SPP has assigned all of its right, title and interest in the SEA to MCP Solar Assets Partners II, LLC ("MCP"), and MCP has accepted such assignment and has assumed the obligations under the SEA on May 9, 2008;

**WHEREAS**, MCP has assigned all of its right, title and interest in the SEA to Energea, and Energea has accepted such assignment and has assumed the obligations under the SEA on August \_\_, 2022;

**WHEREAS**, Host Customer and System Owner now desire to amend and restate the Original SEA.

**NOW, THEREFORE**, in consideration of the agreements and covenants herein, including without limitation thereto System Operator's Proposal, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

### **ARTICLE I DEFINITIONS; RULES OF INTERPRETATION**

**Section 1.1 Definitions.** The following terms shall have the following meanings:

**"Agreement"** Shall have the meaning set forth in the introductory paragraph hereto.

**"Business Day"** Any day other than Saturday, Sunday, or a legal holiday in the State of

California.

**"BES"** The Host Customer's existing building electrical systems that are owned, operated, maintained and controlled by the Host Customer, including the interconnection of these systems with the local utility.

**"Conditions Precedent"** Shall have the meaning set forth in Section 10.1 (Conditions Precedent to System Owner's Obligations) hereof.

**"Default"** Any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII (Default) hereof.

**"Dispute"** Shall have the meaning set forth in Section 21.1 (Disputes) hereof.

**"One Date"** Shall have the meaning set forth in Section 6.4 (Payments) hereof.

**"Early Termination Payment"** Shall have the meaning set forth in Exhibit H (Early Termination Payment), attached hereto.

**"Effective Date"** Shall have the meaning set forth in the introductory paragraph hereto.

**"Electricity"** Electrical capacity and associated electrical energy.

**"Emergency"** Any event or condition relating to or affecting the System which poses an imminent threat of injury to persons or damage to property, including any person or property at the Premises.

**"Energy Audit"** Shall have the meaning set forth in Section 21.7 (Energy Audit) hereof.

**"Environmental Credits"** Any and all federal, state or local renewable energy or emissions credits, incentives or any other green tag, renewable energy, emissions reduction or other environmental benefit, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter and whether available to System Owner as producer of Output or available to Host Customer as purchaser of Output, including incentives pursuant to the California Solar Initiative or successor program.

**"Event of Default"** A Default of this Agreement, as set forth in Article XIII (Default) hereof.

**"Final Date"** Shall have the meaning set forth in Section 15.2 (Termination for Failure to Achieve Re-energization Date) hereof.

**"Force Majeure Event"** Shall have the meaning set forth in Section 14.1 (Force Majeure) hereof.

**"Governmental Approvals"** Shall have the meaning set forth in Section 10.1.1 (Necessary Governmental Approvals) hereof.

**"Host Customer"** Shall have the meaning set forth in the introductory paragraph hereto.



**"Indemnified Parties"** Shall have the meaning set forth in Section 17.4 (Indemnification) hereof.

**"Indemnifying Party"** Shall have the meaning set forth in Section 17.4 (Indemnification) hereof.

**"Interim Term"** Shall have the meaning set forth in Section 2.2 (Interim Term) hereof.

**"Late Fee"** Shall have the meaning set forth in Section 6.5 (Late Fees) hereof.

**"Material Adverse Effect"** means an event, change or occurrence with respect to one Party which, individually or together with any other event, change or occurrence, has a material adverse effect on the financial position, business, properties, assets or results of operations of the other Party.

**"Meter"** The standard instrument(s) and equipment used to measure and record the Output and delivered to the Host Customer at the Point of Delivery. The Meter will be considered part of the System.

**"Output"** Electricity produced by the System delivered by System Owner to the Host Customer at the Point of Delivery.

**"Party/ies"** Shall have the meaning set forth in the introductory paragraph hereto.

**"Person"** Shall mean any natural person, partnership, trust, estate, association, corporation, limited liability company, Governmental Authority or any other individual or entity.

**"Point of Delivery"** The physical location, as set forth on Exhibit A (System), attached hereto, where the System connects to the BES, at which point custody and control of, and title to the, Output is transferred from System Owner to Host Customer.

**"PPT"** Pacific Prevailing Time.

**"Premises"** Shall have the meaning set forth in the recitals hereto.

**"Prudent Industry Practice"** The practices, methods and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

**"Re-energization Date"** Shall have the meaning set forth in Section 2.3 hereof.

**"Renewal Term"** Any additional term, which shall extend the Initial Term to the extent agreed upon by the Parties in writing pursuant to Section 2.1 (Service Tenn.) hereof.

**"Service Term"** Shall have the meaning set forth in Section 2.1 (Service Tenn.) hereof.

**"Site"** Those areas on the Premises where the Solar Facility is to be located, as more fully

described in Exhibit A (System).

**"Solar Electricity Price"** Shall have the meaning set forth in Section 6.1 (Purchase Price) hereof.

**"System"** All equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, Meters, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to maintaining the use of the System and providing Output to Host Customer through and in conjunction with the BES. The System excludes any part of the BES as shown in Exhibit A (System), attached hereto, as such Exhibit A (System) may be modified from time to time during the Service Tenn.

**"System Owner"** Shall have the meaning set forth in the introductory paragraph hereto.

**"Utility Rate"** The applicable all-inclusive electric service rate charged to Host Customer by the electric utility (including municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Host Customer is located and any other energy service provider serving Host Customer, as applicable. This all-inclusive rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, transition or competitive service charges, taxes, and other fees and charges in place.

## **Section 1.2 Interpretation.**

**Section 1.2.1** In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender, any reference to a time of day shall mean the local time; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to "writing" include printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; and references to Persons include their respective successors and permitted assigns.

**Section 1.2.2** In the case of any conflict between a provision of the Request for Proposals, attached hereto as Exhibit F, or System Owner's Proposal, attached hereto as Exhibit G, and a provision contained in the body of this Agreement, the provision contained in the body of this Agreement shall control.

**Section 1.3 Service Agreement.** The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

## **ARTICLE II TERM; SERVICE COMMENCEMENT DATE**

**Section 2.1 Service Term.** The term of this Agreement (the "Service Term") shall commence on the Effective Date and shall expire twenty (20) years following the Re-energization Date (subject to the additional timeframes in certain Force Majeure Events described in Section 14.2 (Result of Force Majeure), as applicable), unless terminated earlier in accordance with the terms and conditions in this Agreement.

**Section 2.2 Interim Term.** The period commencing on the Effective Date and continuing through and until the Service Commencement Date shall be referred to herein as the "Interim Term".

**Section 2.3 Re-energization Date.** System Owner shall provide no less than three (3) Business Days written notice prior to the Service Commencement Date to Host Customer that the System is ready for operation in accordance with Prudent Industry Practice and that service under this Agreement will begin on the date certain indicated in the notice (the "Re-energization Date").

### **ARTICLE III CONSTRUCTION AND INSTALLATION OF SYSTEM**

**Section 3.1 Construction of System.** During the Interim Term, System Owner shall install, construct, service and test the System, pursuant to the terms and conditions set forth in Exhibit A (System), attached hereto. Host Customer shall provide System Owner reasonable access to the Premises, pursuant to the provisions in Article VIII (Access and Space Provisions), in order for System Owner to install, construct, service and test the System.

**Section 3.1.1 Hazardous Materials or Contamination Discovery.** In the event that System Owner discovers the presence or discharge of hazardous materials or environmental contamination at the Site or the designated construction laydown areas, System Owner shall provide to notice to Host Customer of such discovery. System Owner shall not be obligated to continue any work with respect to the System, including without limitation installation or construction, until such time as Host Customer has removed and remediated such presence or discharge. Host Customer shall be responsible for all costs associated with such removal and remediation, including any costs incurred by System Owner to accommodate such removal and remediation. Any delay in the Service Commencement Date due to such discovery shall automatically extend, on a day-for-day basis, the Final Date.

**Section 3.2 Contractors.** System Owner may hire independent contractors to design, build, and install the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner agrees to notify Host Customer of System Owner's intent to use any contractors or subcontractors at least three (3) days before contractor or subcontractor work is set to commence.

**Section 3.3 Location of System.** Host Customer and System Owner agree that the System shall be situated on Host Customer's Premises at the location specified in Exhibit A (System), attached hereto.

### **ARTICLE IV CONNECTION AND POINT OF DELIVERY**

**Section 4.1 Point of Delivery.** The Point of Delivery is the point identified in Exhibit A (System), attached hereto, which is the point of connection of the System to the BES. Title to the Output shall pass from System Owner to Host Customer at the Point of Delivery.

**Section 4.2 Connection.** System Owner shall provide all necessary wiring requirements from the System to the Point of Delivery. System Owner is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement.

## **ARTICLE V SALE OF OUTPUT**

**Section 5.1 Sale and Delivery of Output** System Owner shall deliver and sell all Output to the Point of Delivery, and Host Customer shall accept delivery of and purchase all Output at the Point of Delivery, beginning on the Re-energization Date until the end of the Service Term.

**Section 5.2 System to Reduce Other Electric Purchases.** The Parties intend that the Output will reduce Host Customer's purchase of Electricity from other sources, including the Host Customer's local utility, Pacific Gas & Electricity a/k/a PG&E. Host Customer agrees to meet its Electricity needs first, by the Output from the System, and second, by purchasing Electricity and other electric products from other sources. The System is not intended to eliminate entirely Host Customer's Electricity needs from other sources, and therefore, Host Customer shall have a contractual arrangement in place at all times during the Service Term with its local electric utility or with another provider of retail electricity which is responsible for meeting all of Host Customer's Electricity needs, regardless of the Output from the System.

**Section 5.3 Sale Only to Host Customer.** In no event shall System Owner sell directly, or be deemed to have sold directly, Output to any Person other than Host Customer. In the event that Host Customer's load is less than the total Output being delivered by System Owner to the Point of Delivery at any given time, the Parties acknowledge and agree that such Output shall have been delivered to Host Customer at the point of Delivery in accordance with Sections 4.1 (Point of Delivery) and 5.1 (Sale and Delivery of Output) and shall flow through the BES to the interconnection point between the BES and the local utility. The Parties further acknowledge and agree that in such instance, the treatment of such Output shall be determined by arrangements between Host Customer and its local utility (which arrangements are typically referred to as "Net Metering"), and Host Customer shall be responsible for all charges, fees or taxes related to such Net Metering.

**Section 5.4 Interim Term Energy.** Host Customer shall accept delivery of Output, including in form of test energy, during the Interim Term. There shall be no charge imposed upon Host Customer for System Owner's provision of this Output during the Interim Term.

**Section 5.5 Taxes.** System Owner is responsible for local, state and federal income taxes attributable to System Owner for income received under this Agreement. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon a seller of Electricity, to the extent that the Utility Rate also includes a similar sales or gross receipts tax that is at least as high, on a kWh basis, as the sales or gross receipts tax attributable to System Owner. If such a sales or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Utility Rate, then Host Customer agrees to bear the costs of such sales or gross receipts taxes. System Owner is responsible for any ownership or personal property taxes attributable to the System, if applicable.

## **ARTICLE VI PURCHASE PRICE, PAYMENT AND BILLING**

**Section 6.1 Purchase Price.** System Owner will charge Host Customer the "Solar Electricity Price" for each kilowatt hour (kWh) delivered to Host Customer in accordance with the pricing provisions set forth in Exhibit B (Solar Electricity Price), attached hereto.

**Section 6.2 Monthly Payment.** Host Customer shall pay System Owner a monthly payment as set forth in the monthly invoice by System Owner, based on the Purchase Price provided in Exhibit B.

**Section 6.3 Invoices.** Each month, System Owner shall prepare and provide Host Customer an invoice for Output delivered in the prior month. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer's obligation to pay, or System Owner's right to collect, any payment by System Owner under any such invoice. Each invoice shall set forth in reasonable detail the calculation of all amounts owed as part of the Solar Electricity Price.

**Section 6.4 Payments.** Subject to its contest rights, Host Customer shall pay the full amount of each invoice on or before the fifteenth (15<sup>th</sup>) calendar day following receipt thereof ("**Due Date**"). All payments made by Host Customer under this Agreement shall be by electronic funds transfer pursuant to the instructions set forth in Exhibit D (EFT Instructions), attached hereto, or shall be by check. Unless otherwise directed in the monthly invoice, all payments must be made payable to the bank account of System Owner.

**Section 6.5 Late Fees.** If any part of a Monthly Payment is not made by Host Customer within fifteen (15) calendar days following the Due Date, Host Customer agrees to pay System Owner a late fee of twelve (12) percent per annum of each such late payment ("Late Fee"), to the extent such Late Fee is permitted by law. Host Customer agrees to pay System Owner any Late Fees not later than one (1) month following the original Due Date. The calculation of Late Fees that remain unpaid as set forth in this Section 6.5 (Late Fees) shall not constitute any waiver of Host Customer's obligation to pay such amounts when due, or System Owner's right to collect, any payment by Host Customer under any such invoice, as well as System Owner's right to exercise its rights with respect to Host Customer's Default.

**Section 6.6 Contest Rights.** Host Customer shall notify System Owner in writing within ten (10) calendar days of receipt of the monthly invoice of any portion of the invoiced amount which it has a reasonable basis to dispute in accordance with Section 21.1 (Disputes). The contested portion of any invoiced amount shall not relieve Host Customer of its obligation to pay the uncontested portion of such invoice as set forth in Section 6.4 (Payments).

## **ARTICLE VII METERING**

**Section 7.1 Installation of Meter.** System Owner shall install the Meter, in accordance with the requirements of the California Solar Initiative, at the Point of Delivery to measure accurately the amount of Output delivered by System Owner to Host Customer.

**Section 7.2 Ownership, Operation and Maintenance of Meters.** System Owner shall own, and

at its own expense, operate and maintain the Meter during the Service Term. System Owners shall exercise reasonable care in the operation and maintenance of the Meter so as to assure to the maximum extent reasonably practical an accurate determination of the Output.

**Section 7.3 Meter Reading.** System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Host Customer. The Meter shall be used as the basis for calculating the Solar Electricity Price under this Agreement. The records from each Meter shall be made available to Host Customer upon written request.

**Section 7.4 Alternatives in Event of Non-Operability.** In the event the Meter is out of service or registers inaccurately, the measurement of Output shall be determined by the following alternatives, in the following order: (a) any alternative or back-up meter that System Owner may have installed, if registering accurately; (b) a mathematical calculation if upon a calibration test of such Meter a percentage error is ascertainable; or (c) estimates of deliveries of Output by reference to quantities measured during periods of similar conditions when such Meter was registering accurately.

**Section 7.5 Calibration.** System Owner shall provide calibration testing of the meters prior to their installation and at least annually thereafter to ensure the accuracy of such meters. Host Customer may request that System Owner perform more frequent testing; any such testing in excess of the minimum once-per-year tests shall be at Host Customer's expense. Host Customer shall be entitled to witness such tests.

**Section 7.5.1** If upon testing, any Meter is found to be accurate or in error by not more than plus or minus two percent (2%), then previous recordings of such Meter shall be considered accurate in computing deliveries of Output hereunder, but such Meter shall be promptly adjusted to record correctly.

**Section 7.5.2** If, upon testing, any Meter shall be found to be inaccurate by an amount exceeding plus or minus two percent (2%), then such Meter shall be promptly adjusted to record properly and any previous recordings by such Meter shall be corrected to zero error as set forth. If no reliable information exists as to the period over which such Meter registered inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such Meter was tested and found to be accurate.

**Section 7.5.3** If upon testing, any Meter is found to be in error by more than plus or minus two percent (2%), then the payments for Output made since the previous test of such Meter shall be adjusted to reflect the corrected measurements determined. If the difference in the previously billed Solar Electricity Price minus the adjusted payment is a positive number, that difference will offset amounts owing by Host Customer to System Owner in subsequent month(s). If that difference is a negative number, the difference shall be added to the next month's Invoice and paid by Host Customer to System Owner on the Due Date of such Invoice.

## **ARTICLE VIII ACCESS AND SPACE PROVISIONS**

**Section 8.1 Adequate Space for System.** Host Customer shall provide System Owner adequate space on the Premises for System Owner's installation, operation, maintenance, and, to the extent

applicable, removal, of the System, including the Meter and any applicable transmission facilities. The space for the location of the System may include, but is not limited to, roof, riser, interior, and exterior space, on which the System will reside during the Service Term. Specific plans for the location of the System are provided in Exhibit A (System), attached hereto. Host Customer shall provide System Owner with such space no later than December 31<sup>st</sup>, 2023.

**Section 8.2 Adequate Access for System Owner on Premises.** Host Customer shall provide System Owner adequate access to the Premises for System Owner's installation, operation, maintenance, and, to the extent applicable, removal, of the System, including the Meter. Host Customer shall provide System Owner access to Host Customer's Premises on a twenty-four (24) hour basis to permit System Owner to access its equipment, read and test metering equipment and perform any other functions as may be necessary for System Owner to fulfill its obligations under this Agreement, including inspection, repair, replacement, construction, installation, removal, alteration, expansion, or calibration of the Meter and the System, subject to such reasonable supervision by Host Customer as Host Customer may require. This Agreement shall constitute a non-exclusive license that grants System Owner reasonable access to, occupancy of and use of the Premises of Host Customer in order for System Owner to meet its obligations hereunder, including interconnection with the BES.

**Section 8.3 Access by Host Customer to System.** Because the System will be located on the Premises owned by Host Customer, the Parties acknowledge that Host Customer will have access to the Site for safety, security and Emergency purposes. However, Host Customer agrees to use reasonable best efforts to ensure that, other than in emergencies, the operability of the System is not disrupted, and the System is not damaged as a result of actions or inactions of Host Customer or its designee(s).

## **ARTICLE IX ENVIRONMENTAL ATTRIBUTES**

**Section 9.1 Environmental Credits.** All Environmental Credits, whether available directly or indirectly, shall be and shall remain the property of System Owner for the Service Term. System Owner shall have sole use of such Environmental Credits and shall be permitted to use such Environmental Credits for itself, or to sell, grant, convey, or otherwise dispose of such Environmental Credits to any other Person, in System Owner's sole discretion. Host Customer hereby grants, makes and conveys to System Owner an absolute and irrevocable assignment of any and all right, title and interest Host Customer may at any time have in or to any Environmental Credits; provided that, in the event that Host Customer takes title to the System, System Owner shall re-assign to Host Customer all such right, title and interest in any Environmental Credits upon such purchase.

**Section 9.2 Environmental Documentation.** Host Customer, with the assistance of System Owner, will complete any and all documentation required by California Solar Initiative or other Environmental Credit program to verify System Owner's rights to any economic incentives and the sale of Renewable Energy Certificates (which evidence Environmental Credits) or other Environmental Credits and unfettered ability to sell the Renewable Energy Certificates or other Environmental Credits to a third party.

## **ARTICLE X CONDITIONS PRECEDENT TO SYSTEM OWNER'S OBLIGATIONS**

**Section 10.1 Conditions Precedent to System Owner's Obligations.** Each of the following conditions precedent (the "Conditions Precedent") must be met or waived by System Owner, in its sole discretion, prior to System Owner's obligations to: (a) commence construction and installation of the System; and (b) commence the delivery of Output to Host Customer. System Owner agrees to use good faith efforts to satisfy the Conditions Precedent as expeditiously as practicable. Host Customer agrees to cooperate with System Owner, upon System Owner's reasonable request, in order for System Owner to meet the Conditions Precedent.

**Section 10.1.1 Necessary Governmental Approvals.** System Owner shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the system; and (b) for the generation and sale of Output to the Host Customer under this Agreement, prior to the commencement of delivery of Output to Host Customer (collectively, "Governmental Approvals").

**Section 10.1.2 Additional Consents and Approvals.** System Owner shall have obtained any necessary easements, leases, licenses, consents and approvals and other rights System Owner deems necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

**Section 10.1.3 Ownership of Approvals.** All such permits and approvals in this Article X (Conditions Precedent to System Owner's Obligations) shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will grant all material decision-making rights with respect to such permits and approvals to System Owner.

**Section 10.1.4 Agreements with Third Parties.**

- (a) System Owner may execute a Renewable Energy Certificate agreement; and
- (b) Prior to commencement of construction and installation of the System, System Owner shall have obtained a financing commitment from a third party on terms acceptable to System Owner, such acceptability being in System Owner's sole discretion; and
- (c) System Owner shall have obtained, with Host Customer's assistance, a non-disturbance agreement with each holder of a security interest, lien or mortgage with respect to the Premises existing as of the Effective Date acknowledging and recognizing System Owner's rights as provided hereunder and acknowledging that the System is the personal property of System Owner severable from the Premises and not a fixture.

**ARTICLE XI REPRESENTATIONS**

**Section 11.1 Host Customer Representations.** Host Customer hereby represents to System Owner that:



**Section 11.1.1 Due Authorization.** Host Customer is duly authorized and empowered to enter into this Agreement;

**Section 11.1.2 No Conflict.** This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer leases with respect to the Premises;

**Section 11.1.3 Host Customer Data.** Host Customer has furnished, or caused others to furnish, to System Owner accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

- (a) Utility and any other energy service provider records for the 12-month period preceding the Effective Date;
- (b) Any energy or environmental audits relating to all or any part of the Premises;
- (c) Any service or maintenance agreement(s) regarding the BES, or any part thereof; and
- (d) Construction drawings ("as-builts") in existence as of the Effective Date;

**Section 11.1.4 Accuracy of Information.** The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects.

**Section 11.1.5 Ability to Perform.** Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either Party's ability to perform its respective obligations hereunder and, if Host Customer is a Governmental Authority or instrumentality thereof, Host Customer has complied with all laws and regulations relative to bidding or procurement of the Output hereunder; and

**Section 11.1.6 Ownership and Control over Premises.** Host Customer owns title to and controls the Premises and the real estate upon which the Premises are located, and no other parties hold a security interest in said Premises or real estate.

**Section 11.1.7 Hazardous Materials or Contamination.** Host Customer, after due diligence, has no knowledge of any hazardous materials or environmental contamination on the Site or the designated construction laydown areas.

**Section 11.2 System Owner Representations.** System Owner hereby represents to Host Customer that:

**Section 11.2.1 Due Authorization.** System Owner is duly authorized and empowered to enter into this Agreement.

**Section 11.2.2 No Conflict.** This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party.

**Section 11.2.3 Accuracy of Information.** The information provided pursuant to this

Agreement as of the Effective Date is true and accurate in all material respects; and

**Section 11.2.4 Ability to Perform.** System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party's ability to perform its respective obligations hereunder.

## **ARTICLE XII OBLIGATIONS OF THE PARTIES**

**Section 12.1 Maintenance of System.** System Owner shall maintain the System in good working order, ordinary wear and tear excepted, and shall ensure that the System performs to the performance criteria set forth in Exhibit E (Performance Specifications), attached hereto.

**Section 12.2 Contractors.** System Owner may utilize independent contractors to operate and maintain the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner agrees to notify Host Customer of use of any contractors or subcontractors at least three (3) days before contractor or subcontractor work is set to commence

### **Section 12.3 Ownership.**

**Section 12.3.1** Host Customer acknowledges and agrees that it is not the owner of the System and does not have title to the System. Host Customer agrees that it will at all times keep the System free from any legal process or lien as a result of the actions or inactions of Host Customer. Host Customer will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the System shall, at all times, be personal property severable from the Premises and that it is not, and shall not be deemed to be, a fixture to the Premises.

**Section 12.3.2** In the event that any or all of the Premises is, or becomes, subject during the term of this Agreement to a lease, or to a security interest, lien or mortgage, Host Customer shall ensure that the lessor or the holder of such security interest, lien or mortgagee shall enter into a non-disturbance agreement with System Owner acknowledging and recognizing System Owner's rights as provided hereunder and acknowledging that the System is the personal property of System Owner (or its Lessor) severable from the Premises and not a fixture.

**Section 12.3.3** Host Customer shall from time to time grant to System Owner easements, leases, licenses, consents and approvals and other rights System Owner reasonably deems necessary or desirable for the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

### **Section 12.4 Host Customer General Responsibilities.**

**Section 12.4.1** Host Customer shall be responsible for maintaining and fulfilling all contractual obligations with respect to its interconnected utility service provider, including with respect to such interconnection service, power supply service, Net Metering arrangements, and delivery service, and meeting all requirements imposed by the local utility and the California Public Utilities Commission with respect to such service.

**Section 12.4.2** Host Customer shall be responsible for all ongoing maintenance and upgrades to the BES, required by the local utility or mandated by Prudent Industry Practice and applicable laws and regulations.

**Section 12.4.3** Host Customer shall use reasonable efforts, consistent with its customary and usual practices as of the date hereof, to ensure the safety and security of the System against trespass or unauthorized access to the System: provided that Host Customer shall not be subject to liability for damage or loss caused by such trespass or unauthorized access unless, and to the extent, such damage or loss is caused by the gross negligence, recklessness or willful misconduct of Host Customer.

**Section 12.5 Host Customer Data.** Host Customer will furnish, or cause others to furnish, for the Service Term hereof, to the System Owner, promptly as information becomes available, accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

**Section 12.5.1** Utility records throughout the Service Term;

**Section 12.5.2** Any energy or environmental audits performed during the Service Term relating to all or any part of the Premises;

**Section 12.5.3** Any service or maintenance agreement(s) entered into during the Service Term regarding the BES, or any part thereof;

**Section 12.5.4** Construction drawings ("as-builts") developed during the Service Term; and

**Section 12.5.5** Annual unaudited financial statements of Host Customer, including a Statement of Net Assets and a Statement of Revenues, Expenses and Changes in Fund Net Assets within 140 days of the end of each fiscal year of Host Customer, and annual audited financial statements of Host Customer, including a Statement of Net Assets and a Statement of Revenues, Expenses and Changes in Fund Net Assets, no later than thirty (30) days following approval by Host Customer's City Council during the Term.

**Section 12.6 Notice of Malfunction.** Host Customer shall notify System Owner within twenty-four (24) hours of Host Customer's receipt of actual or constructive notice of (a) any material malfunction in the operation of the equipment installed on the Premises in connection with this Agreement or equipment affected by the Output provided pursuant to this Agreement (including the BES) and/or (b) any interruption or alteration of the energy supply to the Premises.

**Section 12.7 Cooperation Regarding Approvals.** The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents described in this Agreement or otherwise required to effectuate the purposes of this Agreement.

**Section 12.8 Alteration of System Owner Equipment.** Host Customer shall not cause or voluntarily permit any modification or alteration to any part of System Owner's equipment located on the Premises, including without limitation the System, valves, conduits, piping or other materials or tools, except in an Emergency where life or property is threatened.

**Section 12.9 Host Customer Maintenance of BES.** Host Customer shall use care to ensure that the BES does not disrupt or interfere with the operation of the System. Host Customer shall maintain, repair and replace such parts of the BES as necessary in accordance with Prudent Industry Practice so that its equipment within the Premises complies with all applicable building codes and industry standards.

**Section 12.10 Use of Premises.** Host Customer intends to continue to use the Premises in a manner similar to its present use, except as may have been disclosed to System Owner by Host Customer in writing;

**Section 12.11 No Authorization.** Host Customer, under the operation and maintenance provisions of this Agreement, agrees that it is not authorized to adjust, maintain, alter, service, or in any way interfere with operation of the System, except as authorized in writing by System Owner or in the event of an Emergency where life or property is threatened.

### **ARTICLE XIII DEFAULT**

**Section 13.1 System Failure to Perform.** An Event of Default shall occur with respect to System Owner if System Owner fails to provide any Output for a period of at least ninety (90) consecutive days following the Re-energization Date: provided, however, that non-operation of the System for days involving a Force Majeure Event shall not be used in calculating such consecutive days.

**Section 13.2 Host Customer Failure to Pay.** An Event of Default shall occur with respect to the Host Customer if the Host Customer fails to pay an Invoice following the Due Date, and such failure continues for a period of seven (7) days after System Owner provides written notice of such nonpayment to Host Customer.

**Section 13.3 Material Misrepresentation as of Effective Date.** An Event of Default shall occur with respect to either Party if a Party misrepresents a material fact as of the Effective Date.

**Section 13.4 Material Failure to Meet Obligations.** An Event of Default shall occur with respect to either Party if a Party fails to perform fully any material provision of this Agreement other than as explicitly set forth in this Article XIII (Default), and either: (a) such failure continues for a period of thirty (30) days after written notice of such nonperformance; or (b) if the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within the following sixty (60) days.

**Section 13.5 Bankruptcy.** An Event of Default shall occur with respect to any Party that: (a) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition that is not dismissed within sixty (60) days of the initial filing; (b) enters into an assignment of its assets for the benefit of its creditors; or (c) otherwise is unable to pay its debts as they become due.

### **ARTICLE XIV FORCE MAJEURE**

**Section 14.1 Force Majeure.** Neither System Owner nor Host Customer shall be considered to

be in default in the performance of its obligations under this Agreement (excluding Host Customer's obligations to make payment, which obligations are absolute and shall not be excused for any reason whatsoever, including the cessation of operations of Host Customer or the sale of the Premises), to the extent that performance of any such obligation, including the Re-energization Date, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party or its affiliates (a "Force Majeure Event"), including, but not limited to, by way of example, strikes or other labor disputes (other than strikes or labor disputes solely by employees of the Parties to this Agreement), supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

**Section 14.2 Result of Force Majeure.** If System Owner is unable to deliver Output due to a Force Majeure Event, but Host Customer is able to receive such Output, Host Customer shall not be obligated to make payment for such period. The Service Term of this Agreement will be extended for an equal number of days in which Host Customer payment was not required due to a Force Majeure Event affecting System Owner as described in this Article XIV (Force Majeure).

## **ARTICLE XV TERMINATION AND PARTIES' RIGHTS**

**Section 15.1 Termination for Failure to Meet Condition Precedent.** If at any time prior to December 31st, 2023, System Owner determines that any of the Conditions Precedent have not been, or are not capable of being, met, System Owner may terminate this Agreement following twenty (20) days written notice of such termination to Host Customer.

**Section 15.2 Termination for Failure to Achieve Re-energization Date.** Subject to the provisions of this Section 15.2 (Termination for Failure to Achieve Re-energization Date), in the event that System Owner fails to achieve the Re-energization Date by December 31<sup>st</sup>, 2023 (the "Final Date"), Host Customer may terminate this Agreement upon written notice to System Owner. The Final Date shall be extended, on a day-for-day basis:

- (a) Pursuant to the terms of Section 3.1.1 (Hazardous Materials or Contamination Discovery);
- (b) Upon the occurrence of a Force Majeure Event;
- (c) In the event of any delay by Host Customer in fulfilling its obligations under this Agreement, including without limitation its obligations pursuant to Article VIII (Access and Space Provisions); and
- (d) In the event of any delay outside of the reasonable control of System Owner with respect to obtaining any Governmental Approvals.

**Section 15.3 Termination due to Hazardous Materials or Contamination Discovery.** In the

event that Host Customer fails to remove and remediate hazardous materials or environmental contamination pursuant to Section 3.1.1 (Hazardous Materials or Contamination Discovery) within sixty (60) days of receiving a notice of discovery from System Owner, then System Owner shall have the right to terminate this Agreement upon written notice to Host Customer. Upon such termination, Host Customer shall pay System Owner an amount equal to System Owner's actual costs incurred and obligated to be incurred with respect to the System and this Agreement prior to such termination.

#### **Section 15.4 Termination for Default.**

**Section 15.4.1** Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the right to terminate this Agreement upon ten (10) days' prior written notice to the defaulting Party. Without limitation of and notwithstanding the foregoing, if there has occurred a Host Customer default, System Owner shall have a period of nine (9) months from the occurrence of such default during which it may elect to exercise in its sole discretion, by written notice to Host Customer, either of "Option A" and "Option B" in Exhibit H (Early Termination Payment), attached hereto, in which event, Host Customer shall pay System Owner the amounts established in accordance with the applicable provisions of Option A or Option B and thereafter Host Customer shall have no further liability in connection with such Event of Default and the termination of this Agreement.

**Section 15.4.2** At all times following an Event of Default by the Host Customer until the termination of this Agreement as provided in this Section 15.4, System Owner shall have the right but not the obligation to deliver the Output to the Host Customer, and the Host Customer shall be obligated to purchase and pay for such Output in accordance with this Agreement.

**Section 15.4.3** Host Customer and System Owner may each exercise any right or remedy that may be available to it under this Agreement in law or equity to enforce the terms of this Agreement or to recover damages for the breach hereof. Such rights and remedies shall all be cumulative and not exclusive and may be exercised concurrently or successively.

**Section 15.5 Termination due to Force Majeure Event.** Either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting the non-terminating Party has been in existence for a period of ninety (90) days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period.

### **ARTICLE XVI OPTIONS UPON EXPIRATION**

**Section 16.1 Options.** Upon expiration of this Agreement, Host Customer shall have the option either to: (a) purchase the System at fair market value, as agreed upon by the Parties; (b) negotiate with System Owner in good faith to extend the term of this Agreement by five (5) years at a mutually-agreeable price; or (c) instruct the System Owner to remove the System and restore the Site to its original condition.

**Section 16.2 Operations and Maintenance Agreement.** In the event that Host Customer takes title to the System upon expiration of this Agreement, upon Host Customer's request, System Owner agrees to negotiate in good faith with Host Customer with respect to an arrangement for

the ongoing operation and maintenance of the System.

## **ARTICLE XVII LIABILITY; INDEMNIFICATION**

### **Section 17.1 Liability and Responsibility.**

**Section 17.1.1 Host Customer.** Host Customer agrees to pay System Owner for any repairs to, direct or indirect harm to, or loss of System Owner's personal property or fixtures on the Premises, including the System, or loss, damage, expense or liability resulting from injury to or death of persons, to the extent caused by the gross negligence, recklessness or willful misconduct of Host Customer or any of its contractors, agents, employees, partners, owners, subsidiaries, affiliates or invitees. Host Customer may meet its obligations under this Section 17.1 (Liability and Responsibility) from any insurance proceeds that Host Customer may obtain.

**Section 17.1.2 System Owner.** System Owner agrees to pay Host Customer for any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, or loss, damage, expense or liability resulting from injury to or death of persons, to the extent caused by System Owner or any of its contractors, agents, employees, partners, owners, subsidiaries or affiliates. System Owner may meet its obligations under this Section (Liability and Responsibility) from any insurance proceeds that System Owner may obtain.

**Section 17.2 Disruption in Delivery.** In the event that System Owner is capable of generating and delivering Output to Host Customer, but as a result of Host Customer's negligence, recklessness, or willful misconduct, Host Customer does not accept delivery of such Output (or as a result of Host Customer's change to the BES, Host Customer is unable to accept delivery of such Output), Host Customer agrees to pay System Owner the sum of (a) the amount of kWh for which delivery was disrupted, on a *pro rata* basis, based on the Output estimates provided in Exhibit C (Monthly Estimates) times the Solar Electricity Price and (b) the value of the Environmental Credits that were foregone due to such delivery disruption, based upon market value of such Environmental Credits at the time of such delivery disruption.

**Section 17.3 Consequential Damages and Limitation of Liability.** Except as expressly provided for herein, neither Party will be liable, even if given prior notice, to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including but not limited to damages in the nature of loss profits or revenues, loss of use of facilities, or equipment, and claims of third parties or inability to perform contracts with third parties, except to the extent such damages are caused by the gross negligence, recklessness or willful misconduct of such Party. In no event will the liability of System Owner due to any claim or cause arising out of this Agreement exceed the total value of all amounts paid by Host Customer to System Owner under this Agreement prior to System Owner's payment to Host Customer of such claim plus all amounts reasonably estimated to be due from Host Customer to System Owner under this Agreement thereafter.

### **Section 17.4 Indemnification.**

**Section 17.4.1 Indemnification by System Owner.** To the furthest extent allowed by law, including California Civil Code Section 2782, System Owner shall indemnify, hold harmless and

defend Host Customer and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by Host Customer, System Owner or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of the System or under this Agreement. System Owner's obligations under the preceding sentence shall apply regardless of whether Host Customer or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or willful misconduct of Host Customer or any of its officers, officials, employees, agents or volunteers. If System Owner should subcontract all or any portion of the System work, System Owner shall require each subcontractor to indemnify, hold harmless and defend Host Customer and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding sentence.

**Section 17.5 Survival** The provisions of this Article XVII (Liability; Indemnification) shall survive the expiration or termination of this Agreement.

## **ARTICLE XVIII LIMITED WARRANTY; INTERRUPTION OF SERVICE**

**Section 18.1 System Performance.** System Owner hereby warrants the sufficient performance of the System during the Service Term. To the extent that the System does not perform properly, System Owner agrees, as part of its operation and maintenance obligations hereunder, to purchase such equipment and undertake such labor to bring the System into proper performance. Such warranty includes all components and labor costs associated with keeping the System in proper working order. System Owner shall retain any and all rights to manufacturer's warranties and any warranties with respect to the work of contractors or subcontractors during the Service Term in order to meet its obligations to maintain the proper performance of the System.

**Section 18.2 Transfer to Host Customer.** Upon transfer of ownership of the System to Host Customer under this Agreement, System Owner agrees to pass-through and to transfer to Host Customer any applicable manufacturers' warranties provided on the System, as provided in Exhibit E (Performance Specifications), attached hereto. Such warranties include any guarantee, reflective of the passage of time, of the System nameplate rating in standard test conditions and any other express or implied warranty that may be transferable to Host Customer from the manufacturer, designer or installer of the System. Following any such transfer of ownership to Host Customer, the Service Term shall end, and System Owner shall have no further obligation with respect to the performance of any part of the System.

### **Section 18.3 Interruptions Are Expected.**

**Section 18.3.1** System Owner shall use reasonable care to ensure the operation of the System and supply of Output. However, the Parties explicitly, acknowledge and understand that the System is comprised of intermittent generation facilities, and will not provide Host Customer with an uninterrupted supply of Electricity. Given weather and other conditions beyond the control of System Owner, this Agreement provides no warranty or guarantee for any particular level of Output to Host Customer. System Owner shall not be liable for any special, direct, indirect, consequential or incidental damages caused by or resulting from any interruption in Output during the Service



Term, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any interruption. If Output is interrupted, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

**Section 18.3.2** Host Customer shall not install, or permit to be installed, on the Premises (or any other property owned or controlled by Host Customer) any physical obstruction to the operation of the System that reduces Output by ten percent (10%) or greater.

**Section 18.3.3** In the event that any obstruction that could reasonably be expected to reduce the Output by ten percent (10%) or greater is proposed to be erected or installed on property other than the Premises, Host Customer shall promptly deliver to System Owner copies of any notice relating thereto received by Host Customer and System Owner shall have the right to intervene in any proceeding or otherwise contest the installation or erection of any such obstruction: provided that, in the event that any such obstruction is nonetheless installed or erected, System Owner shall have the right to terminate this Agreement without penalty to Host Customer.

**Section 18.4 Reasons for System Owner's Interruption of Output.** Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output. System Owner shall use reasonable efforts to give written notice to Host Customer of any expected interruption of delivery of Output at least five (5) Business Days prior to the date of any interruption and shall use its reasonable efforts to inform Host Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Host Customer and the use of its Premises. Notwithstanding the foregoing, System Owner shall not be required to supply Output to Host Customer at any time System Owner reasonably believes BES to be unsafe. System Owner reserves the right to curtail Output if so directed by authorized governmental authorities or electric utilities.

**Section 18.5 Cost to Restore Service Following Interruption.** System Owner shall bear any costs associated with restoring service following any interruption of Output as part of System Owner's operation of the System: provided, however, that, if interruptions of Output are caused directly by the actions or inactions of Host Customer, then Host Customer agrees to bear the incremental costs associated with the restoration of the delivery of Output.

## **ARTICLE XIX INSURANCE**

**Section 19.1 System Owner's Insurance.** Throughout the Interim Term and Service Term of this Agreement, as applicable, System Owner or its contractors shall pay for and maintain in full force and effect all policies of insurance required hereunder, to the extent applicable, with an insurance company(s) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VI" in Best's Insurance Rating Guide; or (ii) authorized by Host Customer's Risk Manager. The following policies of insurance are required:

**Section 19.1.1 COMMERCIAL GENERAL LIABILITY** insurance which shall Advertising Liability, Libel, Slander, Blanket Contractual, Products and Completed Operations, and Personal Injury, Bodily Injury and Property Damage Liability limits of not less than \$1,000,000

each **occurrence**.

**Section 19.1.2** COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto," with combined single limits of liability of not less than \$1,000,000 per occurrence.

**Section 19.1.3** WORKERS' COMPENSATION insurance as required under the California Labor Code.

**Section 19.1.4** The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of Host Customer, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the Interim Term and Service Term of this Agreement, as applicable, System Owner or its contractors shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy(s). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, System Owner or its contractors shall file with Host Customer a certified copy of the new or renewal policy and certificates for such policy.

**Section 19.1.5** The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name Host Customer, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so System Owner's or its contractors' insurance shall be primary and no contribution shall be required of Host Customer. System Owner or its contractors shall furnish Host Customer with the certificate(s) and applicable endorsements for ALL required insurance prior to the commencement of installation of the System on the Premises. System Owner or its contractors shall furnish Host Customer with copies of the actual policies upon the request of Host Customer's Risk Manager at any time during the Interim Term and Service Term of this Agreement.

**Section 19.1.6** If at any time during the Interim Term and Service Term of this Agreement, System Owner fails to maintain the required insurance in full force and effect, all work on/pursuit of the System shall be discontinued immediately, and all payments due or that become due to System Owner shall be withheld until notice is received by Host Customer that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Host Customer. Any failure to maintain the required insurance shall be sufficient cause for Host Customer to terminate System Owner's rights under this Agreement.

**Section 19.1.7** If System Owner should subcontract all or any portion of the work to be performed on the System, System Owner shall require each subcontractor to provide insurance protection in favor of Host Customer, its officers, officials, employees, agents and volunteers in accordance with the terms of each of this Section 19.1 (System Owner Insurance), except that the subcontractors' certificates and endorsements shall be on file with System Owner and Host Customer prior to the commencement of any work by the subcontractor.

## **ARTICLE XX ASSIGNMENT**

**Section 20.1 Assignment by Host Customer.** Host Customer may not assign this Agreement without the consent of System Owner.

**Section 20.2 Assignment by System Owner.** System Owner may not assign this Agreement without the consent of Host Customer; provided, however, that System Owner may, without the consent of Host Customer, collaterally assign its rights and obligations under this Agreement in connection with any financing of the System. Host Customer agrees to use commercially reasonable efforts to provide acknowledgements or consents requested by financing parties in conjunction with such financing.

## **ARTICLE XXI MISCELLANEOUS**

**Section 21.1 Disputes.** Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the agreement of the Parties, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation or, in the event the Parties do not agree upon submission of the Dispute to mediation, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided however, in no event shall System Owner be obligated to deliver Output in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

### **Section 21.2 Confidentiality.**

**Section 21.2.1** Host Customer is a municipal corporation subject to the California Freedom of Information Act and other laws, rules and policies affording members of the public certain rights to information about Host Customer's business dealings. To the extent consistent with such laws, Host Customer agrees (i) to keep confidential the terms and conditions of this Agreement and its performance by both Parties, and (ii) not to disclose to any third parties the terms of this Agreement or costs incurred by either Party under this Agreement, without System Owner's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Host Customer shall notify System Owner of any requests by any Person for such information. To the extent allowable by law, System Owner agrees to keep confidential all documents, utility bills, architectural and mechanical plans, and any other information provided to System Owner by Host Customer during the Service Term of this Agreement and thereafter.

**Section 21.2.2** Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and

any employee, representative, or agent of any party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.

**Section 21.3 Notices and Changes of Address.** All notices to be given by either Party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, or expresses overnight delivery service addressed as follows:

If to System Owner:

Energea Fresno LLC  
Attention: Mike Silvestrini  
62 Clementel Drive  
Durham, CT 06422-1102  
mike@energea.com

If to Host Customer:

City of Fresno - Department of Airports  
4995 E. Clinton Way  
Fresno, CA 93727-1525  
Attention: Director of Aviation

or such other addresses as either Party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

**Section 21.4 Applicable Law and Jurisdiction.** This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of California. Each of Host Customer and System Owner hereby consents and submits to the personal jurisdiction of the courts of the State of California.

**Section 21.5 Complete Agreement.** This Agreement, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, oral or otherwise pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

**Section 21.6 No Amendment.** This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.

**Section 21.7 Energy Audit.** Any energy audit that may be authored by System Owner and/or its consultant(s), including any summaries, excerpts, and abstracts thereof (collectively, the "Energy Audit"), are used to show operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by System Owner; in the event of any conflict or contradiction between the Energy Audit and the provisions of this Agreement, the provisions of this Agreement shall govern.

**Section 21.8 Further Documents.** The Parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

**Section 21.9 Severability.** If any part of this Agreement is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced only to the extent required to remove the invalidity or unenforceability.

**Section 21.10 Counterparts.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

**Section 21.11 Neutral Interpretation.** The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**Section 21.12 No Waiver.** The failure of a Party to enforce any term of this Agreement or a Party's waiver of the nonperformance of a term by the other Party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can be amended only by written agreement of the Parties.

**Section 21.13 Survival.** Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including without limitation Section 21.1 (Disputes).

**Section 21.14 Marketing.** System Owner shall have the right to promote the installation and usage of the installed System through any means, including through press releases, case studies, published material, Internet websites and sales literature. Host Customer shall have the right to promote the installation of the System in accordance with the guidelines of the Self-Generation Incentive Program criteria: provided, however, that Host Customer agrees to provide System Owner the opportunity to review and edit all marketing materials regarding the System. Host Customer agrees to provide space within the Premises for an information kiosk, provided at System Owner's expense, regarding the System: provided, however, that Host Customer shall have the right to review and approve the location and aesthetic qualities of such kiosk.

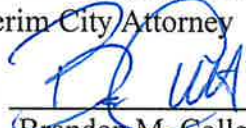
*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

By: \_\_\_\_\_  
Henry Thompson  
Director of Aviation

APPROVED AS TO FORM:  
RINA M. GONZALES  
Interim City Attorney

By:  \_\_\_\_\_  
Brandon M. Collet Date  
Supervisory Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy Date

Addresses:  
CITY:  
CITY OF FRESNO  
Attention: Mark Davis  
Airports Planning Manager  
4995 E. Clinton Way  
Fresno, CA 93727  
Phone: (559) 621-4532  
E-mail: mark.davis@fresno.gov

ENERGEA FRESNO LLC,  
A Delaware Corporation

By:  \_\_\_\_\_

Name: Mike Silvestrini

Title: Authorized Person  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Managing Partner/ Co-Founder  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

SYSTEM OWNER:  
ENERGEA FRESNO LLC  
Attention: Mike Silvestrini  
Manager  
62 Clementel Drive  
Durham, CT 06422  
Phone: (860) 316-7466  
E-mail: mike@energea.com

## **EXHIBIT A**

### **System**

Point of delivery is shown from the Clovis Avenue site to the PG&E Interconnection point. The system plan is to install a single-axis flat plate PV module tracking system consisting of modules to achieve a CEC rating of approximately 1 MWac, under the CPUC California Solar Initiative rules.

System Owner reserves the right to change PV module type, technology or specific sizing at the Clovis Avenue site, as long as the module type is CEC certified, the system complies with CPUC rules, and maximizes system sizing up to 1 MWac for the CSI programs.

## **EXHIBIT B**

### **Solar Electricity Price**

For 20 years, System Owner will sell electricity production from the 1 MWac solar electric power system at the following fixed rates and under the terms and conditions listed in this agreement and these exhibits regarding CPUC rebates.

CSI Program System \$.11/kWh



## EXHIBIT C

### Monthly Estimates

Estimated production the 1 MWac, cec rating system is provided in the following chart:

<b>Year</b>	<b>kWh Generation Estimate 1</b>
Year 1	1 524 536
Year 2	1 570 920
Year 3	1 563 084
Year 4	1 555 286
Year 5	1 547 527
Year 6	1 539 808
Year 7	1 532 126
Year 8	1 524 483
Year 9	1 516 878
Year 10	1 509 311
Year 11	1 501 782
Year 12	1 494 290
Year 13	1 486 836
Year 14	1 479 418
Year 15	1 472 038
Year 16	1 464 695
Year 17	1 457 388
Year 18	1 450 118
Year 19	1 442 884
Year 20	1 435 686

**EXHIBIT D**

**EFT Instructions**

[to be amended]

## **EXHIBIT E**

### **Component Specifications**

[to be amended after final engineering]

## EXHIBIT H

### EARLY TERMINATION PAYMENT

#### **Option A**

This Agreement shall terminate and System Owner shall transfer title to the System to Host Customer free and clear of liens and encumbrances upon the payment by Host Customer of the Early Termination Payment set forth in the following table corresponding with the date on which such termination occurs plus all other amounts due and payable to the System Owner hereunder as of the termination date.

For purposes hereof, the Early Termination Payment has been established based on an assumed Re-energization Date of December 31<sup>st</sup>, 2023. To the extent that the actual Re-energization Date is earlier or later than December 31<sup>st</sup>, 2023, the Starting and Ending date ranges shall be adjusted by System Owner accordingly.

<b>Year</b>	<b>Early Termination Payment (\$USD)</b>
Year 1	2 047 151
Year 2	2 014 831
Year 3	1 965 194
Year 4	1 911 672
Year 5	1 854 379
Year 6	1 792 960
Year 7	1 727 446
Year 8	1 656 618
Year 9	1 580 397
Year 10	1 498 279
Year 11	1 410 054
Year 12	1 314 471
Year 13	1 211 186
Year 14	1 099 480
Year 15	978 809
Year 16	847 863
Year 17	705 927
Year 18	551 978
Year 19	500 000
Year 20	500 000

Termination of this Agreement, transfer of title and the payment of the Early Termination Payment shall take place not more than thirty (30) days following notice from System Owner to Host Customer of its election to exercise this Option A as provided in Section 15.4 of this Agreement. System Owner shall deliver to Host Customer all necessary and customary documents to effect the transfer of the System.

**Option B**

System Owner may terminate this Agreement and remove the System from the Host Customer's Premises, and the Host Customer shall pay the System Owner an Early Termination Payment equal to the sum of (1) loss of revenue and other economic benefits of the System that otherwise would have been earned under or in connection with this Agreement for the period from the date of the disconnection of the System from the BES to the start-up of the System at an alternate location, less an amount equal to the variable operating costs that the System Owner would have incurred in such period, which period, for purposes of calculating the Early Termination Payment, shall not exceed ninety (90) days, and (2) all other amounts due and payable to the System Owner hereunder as of the date of termination. Termination of this Agreement, removal of the System and payment of the Early Termination Payment shall take place within sixty (60) days of written notice from System Owner. The System Owner shall thereafter promptly restore the Site to its condition prior to the construction and installation of the System.