

## Master Utility Service Agreement

The parties to this Master Utility Service Agreement (“M-USA”) are the City of Douglas, Arizona (“**Customer**”) and Sustainability Partners LLC, a Delaware public benefit limited liability company (“**SP**”).

This M-USA sets forth the General Terms and Conditions attached as Exhibit 1 (the “**General Terms**”) that apply to all solutions and services to be provided to Customer as described in each subsequently fully executed document that is substantially similar to the following:

Exhibit 2 (each a “**Service Addendum**” or “**SA**”) by the entity named in such SA (as applicable, the “**SP Entity**”);

Exhibit 3 (each a “**Notice to Proceed**” or “**NtP**”) that is associated with a specific part of or an entire SA;

Exhibit 4 (each a “**Certificate of Acceptance**” or “**CoA**”) that is associated with a specific part of or an entire NtP; and

Exhibit 5 (each an “**ACH Agreement**” or “**ACH**”) that is associated with every SP Entity of each NtP and must be executed where not prohibited under applicable laws, prior to the related NtP being effective.

Any inconsistency in the Agreement as between its component documents shall be resolved by giving precedence in the following order: Exhibit 4 – CoA; Exhibit 5 – ACH; Exhibit 3 -NtP; Exhibit 2 – SA; and Exhibit 1 – General Terms.

This M-USA is entered into by and between the undersigned parties for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, as of \_\_\_\_\_, 2025.

City of Douglas, AZ

Sustainability Partners LLC

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

Name: Ana Urquijo  
Title: City Manager  
Phone: (520) 417-7303  
E-Mail: ana.urquijo@douglasaz.gov  
Address: 425 East 10<sup>th</sup> Street  
Douglas, AZ 85607

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

Name: Adam T. Cain  
Title: President  
Phone: (480) 845-0400  
E-Mail: acain@s.partners  
Date: \_\_\_\_\_, 2025

**Exhibit 1**  
**General Terms and Conditions**

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These General Terms and Conditions (“**General Terms**”) apply to and are incorporated into each Agreement (defined below) between the Parties. Capitalized terms used but not defined in these General Terms have the meanings given in the applicable Agreement.

1. **The Sustainability Services.** Customer engages the SP Entity as an independent contractor to provide the following services (the “**Services**”) at the Location on the terms set forth in the Agreement for Unit(s):
  - 1.1. *SP Entity ownership.* If the SP Entity is funding the Unit(s), the SP Entity will acquire and cause the Unit(s) to be installed at the Location and retain all Unit(s) ownership;
  - 1.2. *Customer ownership.* If the SP Entity is paying a Rights Fee or the Unit(s) are Customer funded, the Customer has and retains all Unit(s) ownership and operation rights provided there is no Payment Default;
  - 1.3. *Maintenance.* Whether SP Entity ownership or Customer ownership, maintenance costs of Unit(s) shall be as provided for in Sections 7, 8, and 9; and
  - 1.4. *Usage.* Unless there is a Payment Default, the SP Entity allows Customer’s full operation of the Unit(s) at the Location during the Initial Term and any and all subsequent Additional Terms (each being defined in the SA and collectively defined as the “Term”).
2. **USA Payments.**
  - 2.1. *In General.* Customer agrees that the USA Payment is for an Essential Utility Service, and Customer will pay the USA Payments to the SP Entity as calculated in the Agreement. Where the Revenue Sharing Source is the source of USA Payments and the Revenue Sharing Source amount is insufficient to satisfy the USA Payments due, Customer will pay the shortfall in the difference between such Revenue Sharing Source amount and the USA Payments as invoiced by the SP Entity in accordance with Section 2.2.
  - 2.2. *Invoicing and Payment.* The SP Entity will electronically invoice Customer monthly, and invoiced amounts are due in full within 30 days of delivery by wire transfer or by such other payment method as Customer and the SP Entity shall hereafter agree. If, (a) at the time of the invoice being issued, Customer is not investment grade (being rated at least BBB- by Standard & Poor’s, Baa3 by Moody’s Investors Service, or BBB- by Fitch Ratings), (b) a Payment Default has occurred with respect to any amounts payable to SP Entity, or (c) the invoice includes IaaI or Rights Fee related amounts, then the USA Payment shall be made prior to the due date by ACH.
  - 2.3. *Late Fees.* If there is a Payment Default with respect to any amount payable to the SP Entity, such amount will accrue interest at the Delinquency Rate, and Customer will bear the reasonable costs and expenses (including attorneys’ fees and costs) incurred by the SP Entity in collecting such amounts.
  - 2.4. *Data Interruptions.* If data for calculation of a USA Payment is unavailable to the SP Entity at the time of invoicing, the SP Entity may estimate the payment associated with such Units based on historical Usage, usage of similar Units or other reasonable means; provided that (a) any such estimated amounts shall be clearly identified on the applicable invoice, and (b) if the relevant actual data becomes available within six months following the invoice date for the estimated payment, the SP Entity will reconcile on the next invoice the actual data with the estimated data and provide a true-up summary to Customer.
  - 2.5. *Excess Usage.* Should the aggregate USA Payments exceed the Maximum Expected Use, those funds will be credited to the Support Reserves.
  - 2.6. *Governmental Entity Provisions.* If Customer is a Governmental Entity and the USA Payment is not based on a Revenue Sharing Source or IaaI, the following provisions shall apply:
    - a) *Utility Appropriations.* All authorization requests for appropriations and budgets which include Customer utilities shall also include sufficient funding specific to the SP Entity for all amounts due to the SP Entity and all amounts Customer reasonably anticipates will be due to the SP Entity prior to the next utility authorization request.
    - b) *Legislative Appropriation.* The SP Entity acknowledges that Customer’s payment of amounts due under the Agreement may be subject to the good faith appropriation by Customer’s applicable legislative body of the availability of funds following legislative appropriation. Customer makes no representations, warranties, or covenants, express or implied, that the legislature will make such appropriations sufficient for its Essential Utility Services. While the Customer (i) uses its best efforts in good faith to pass appropriations for Essential Utility Services, (ii) keeps the SP Entity fully informed of such efforts, and (iii) no other Customer Essential Utility Service receives a relatively disproportionate pro-rata payment appropriation than what is owed compared to the SP Entity, the Customer’s unpaid and late USA Payments will not result in a Customer Payment Default.
    - c) *Invoicing and Payment.* If there is an applicable Prompt Payment Act under applicable Law, then, as applicable (i) in lieu of application of Section 2.2 above, the SP Entity will electronically invoice Customer monthly, and invoiced amounts are due and shall be paid in full in accordance with the provisions of the Prompt Payment Act or as Customer and SP Entity subsequently agree and (ii) in lieu of application of Section 2.3 above, payments not made when due shall entitle the SP Entity to the maximum penalties and other remedies as set forth in the Prompt Payment Act.
    - d) *Priority of Payments.* For IaaU and Rights Fee agreements, the Customer agrees payments to SP Entity will be treated pari-passu in all respects with payments to the Customer’s other Essential Utility Services. Furthermore, the Customer represents that other than taxes, no existing, planned, or future encumbrances or obligations will take precedence for payment in front of these services and will provide timely documentation showing such upon SP Entity request.
3. **USA Services, Unit Procurement, Installation and Acceptance.**
  - 3.1. *Selection of USA Services and their Installed Units.* Customer and the SP Entity shall cooperate in defining the USA Service, including, if applicable, the specific design and specifications of the Installation together with information in support of SP underwriting where there is an intent for the SP Entity to fund the Units(s). The type of USA Service to be provided and their Unit(s) for installation at the Location, if any, shall be mutually selected by SP Entity and Customer as set forth in the applicable SA.
  - 3.2. *Competitive Bidding.* If Customer is a Governmental Entity, then to the extent that Customer or the SP Entity determines that a competitive bidding process is desirable or required under applicable Law, the selection of the Units, vendor(s), or contractor(s) for the Installation shall be in accordance with provisions of such applicable Law and conducted jointly by the SP Entity and Customer including requirements that the general contractor use commercially reasonable efforts to allow qualified local and/or minority or other preferred contractors have an opportunity to competitively bid on the SA. The awards will be based on lowest cost of usage from qualified bidder(s) or best value bidders(s) over the Unit’s expected useful life, consistent with the requirements and analysis provided by the SP Entity. To the extent applicable, this Section 3.2 shall govern over the terms of Section 3.1.
  - 3.3. *Vendor Contracts.* A written agreement with an AV for Installation work (an “**Installation Agreement**”), solutions, and/or services covered by the Agreement (collectively, these agreements are referred to as the “**Vendor Contracts**”) shall be mutually agreed upon by both Parties and executed by either the SP Entity or the Customer as determined by the related SA and subject to the other Party’s written approval of such Vendor Contracts. Each Party shall be an express beneficiary to the Vendor Contracts’ warranties, guaranties, and obligations. Each Party shall be independently entitled (without obligation) to enforcement of rights under the Vendor Contracts. Neither SP nor an SP Entity will perform the work of a contractor, including, without limitation, building, construction, demolition, repair, maintenance, design, engineering, delivery, commissioning, or related work.
  - 3.4. *Underwriting.* Following selection of the Unit(s) and AV(s) for the USA Services in accordance with the foregoing, the SP Entity shall make a good faith effort to contract for and underwrite the SA and Vendor Contracts. The Parties acknowledge that the pre-NtP underwriting approval may be

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**General Terms and Conditions**

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contingent on agreement to enter into an amended and restated SA with updated Usage Rates. Until the NtP for a SA is fully executed, neither Party shall have any financial liability or obligation to the other with respect to the terms of the Agreement.

- 3.5. *Changed Expectations.* Should the SP Entity notify Customer of a Scope Contingency, Underwriting Contingency, Supply Chain Contingency or a material change in a condition upon which the SA relied (i.e., changes in the SA scope, FMEs, DTCs, or expectations of material terms from project contractors, service providers, vendors, Customer, or funding sources) that necessitates a modification to the Agreement to accommodate such change, then Customer may select one of the following options:

- a) the SP Entity will update the Agreement as necessary to accommodate the changes; or
- b) Customer will implement and assume responsibility for the changes directly without any additional obligation of the SP Entity; or
- c) Customer will terminate the Agreement and reimburse the SP Entity for all SA Actual Costs incurred or resulting from the termination.

Until such time that one of the options specified above is selected and effectuated, further efforts towards the related Installation may be suspended by the SP Entity.

- 3.6. *The Installation.* Following Customer's issuance of a NtP: (i) the SP Entity may proceed with issuing the Vendor Contracts and engage Support, the costs of which shall be included as DTCs; (ii) the SP Entity and the Customer shall work collaboratively to cause the applicable AV(s) to perform in accordance with the Vendor Contract(s); and (iii) the Customer (through its staff, construction manager or project manager) will collaborate diligently and reasonably with the SP Entity representatives on the Vendor Contract(s) (including matters relating to the performance, conformity or timeliness of goods and services to be provided for the SA by the AVs).
- 3.7. *Project Facilitation.* The Parties shall be able to communicate directly with each other as often as reasonably necessary. Should a third-party consultant, agent, or advisor be retained for a SA, the other Party may provide Notice requesting the individual or firm be removed from the project. The Parties shall confer in good faith within 10 business days of the Notice to resolve the removal Notice. If the Parties cannot agree to a resolution, then removal shall be accomplished within 20 business days of the Notice and each Party shall hold harmless the other Party for the removal.
- 3.8. *Payment of the Direct Third-Party Costs.* Except as otherwise provided for in the Agreement, DTCs shall be paid in full by the Initial Funding Entity under the Agreement, and USA Services shall be performed pursuant to the Vendor Contract(s). Subject to the terms of the Agreement, the Initial Funding Entity agrees to pay the DTC, except to the extent the DTC exceeds the defined Installation Limit in the applicable SA.
- 3.9. *Protection against Liens.* The SP Entity agrees, at Customer's direction, to withhold payment to any AV of materials or services in connection with providing or installing any equipment associated with a USA Service until such AV executes and delivers to Customer lien waivers in relation to the Vendor Contract against Customer's property or against any Customer fund established for the payment of the USA Service. Customer shall not be responsible for making payments under the Agreement related to that AV until all such lien waivers have been delivered to Customer, if previously requested.
- 3.10. *Installation Payment Notices.* When the one Party is the Initial Funding Entity and the other Party is the contracting party with the AV, the Party that is the contracting party will provide the Initial Funding Entity a copy of each installation payment notice that will (a) identify the amount to be paid by the Initial Funding Entity, (b) the date by which payment must be made, (c) payment instructions for electronic payment to the AV, and (d) be delivered at least 10 business days prior to the date by which the payment must be made.
- 3.11. *Inspection of Installation.* At its discretion and with reasonable prior notice to and coordination with Customer, the SP Entity may at its sole discretion, periodically inspect the Installation. If a AV has not performed the Installation work in accordance with the Vendor Contract, then (a) Customer and SP Entity will endeavor to cause the AV to diligently cure such conditions, and if the AV fails to timely cure, the SP Entity may terminate such AV and engage another AV to cure such conditions with the associated costs being deemed SA Actual Costs, and (b) the SP Entity may suspend its obligations under the Agreement until such conditions have been cured.
- 3.12. *Late Installation Payments.* If the Initial Funding Entity fails to pay any undisputed installation payment amount when due and the other Party pays the AV such installation payment, then amounts will accrue interest at the Delinquency Rate, and the Initial Funding Entity will bear the reasonable costs and expenses (including attorneys' fees and costs) incurred by the other Party in collecting such amounts.
- 3.13. *Certificate of Acceptance.* Notwithstanding anything to the contrary provided for or implied in the Agreement:
- a) *For Rights Fee or IaaS:* Customer will be deemed to have executed the applicable CoA (in substantially the form of Exhibit 4) and start remitting USA Payments upon Customer receiving the funds or control of the funds through either a bank deposit, escrow account, irrevocable trust account or payment to a Customer directed third-party.
  - b) *USA Service and Installations.* When Unit(s) have been installed and the Customer begins operating those Unit(s), the Customer will be deemed to have executed and delivered that applicable CoA and start remitting the USA Payments applicable to the Unit(s) upon receipt of an invoice. Otherwise, as Unit(s) are installed, the Customer shall be provided with applicable and periodic (no more frequent than monthly) CoA's for execution. If within 5 business days after delivery, the Customer has neither executed a CoA nor provided the applicable AV and the SP Entity in writing the specific defects that are within the statement of work for the Unit(s) being covered by the CoA, which need to be cured prior to executing the CoA, the CoA will be deemed executed and delivered by the Customer.
  - c) *AV Cures.* Should an AV not promptly cure any breach of applicable Vendor Contract to the Customer's and SP Entity's satisfaction, subject to any notice and grace periods provided for in such Vendor Contract, the SP Entity may in good faith initiate immediate binding arbitration before an independent arbitrator competent in such matters to clearly define the scope of any remaining work under the applicable Vendor Contract(s). Upon SP Entity's selection of the arbitrator, both the AV and Customer will have three business days to provide a written reasonable objection to the selection with specific details outlining the basis of such objection. This process shall be repeated until an arbitrator is identified to which no party objects. Once all work covered by the statement of work set forth in the applicable SA has been substantially completed in accordance with the applicable Vendor Contract or, if silent, then completed in accordance with customary industry standards, the Customer agrees the CoA is then deemed executed and delivered by it.
- 3.14. *Installation Delays.* Except to the extent solely caused by a delay of either the SP Entity or AVs, if the CoA has not been executed and delivered (or deemed executed and delivered) by Customer on or before the Completion Target specified in the SA, the Customer will pay an amount equal to the Carrying Charge percentage of the SA Actual Cost within 30 days after receipt of SP Entity's invoice therefor and an additional Carrying Charge each 30-day period thereafter during which such condition continues on SA Actual Cost. Subject to the foregoing, the AVs are solely responsible for the performance, conformity or timeliness of goods and services to be provided for the Installation.

**4. Unit Operation.**

- 4.1. *Customer Operation.* Except to the extent expressly prohibited under applicable Law or to the extent responsibility for same is specifically otherwise allocated in Sections 7, 8, and 9, Customer (i) is solely responsible for the Unit(s) while in Customer's possession or operations and (ii) will indemnify, defend, and hold harmless SP and the SP Entity from and against any and all Claims relating to the Unit(s) (including without limitation Customer's operation, use or possession of the Unit(s)).

**Exhibit 1**  
**General Terms and Conditions**

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- 4.2. *Unit Location.* Customer will keep the Unit(s) at the Location, except to the extent the SP Entity approves otherwise in writing. The Unit(s) shall be used solely in the conduct of Customer's business. Customer warrants that the Unit(s) will be used for commercial or business purposes and not for consumer, personal, home or family purposes.
- 4.3. *Malfunctions; Defects; Changes to Environment.* Customer will promptly notify the SP Entity if Customer discovers a material malfunction, defect or interruption in the operation or condition of the Unit(s) or material change to an integral environmental resource, including water, energy, gas, or air that may degrade the Unit performance, maintenance, or UL. Customer may, at its own risk, continue operating the Unit(s) that Customer knows is not in good and working condition only to the extent approved in writing by the SP Entity.
- 4.4. *Efficiency Programs/Features.* The SP Entity may incorporate demand response, performance/maintenance monitoring/updating, and similar programs or features into the operation of the Unit(s). Customer must provide Notice of approval, prior to implementation of a new program or feature where there is a reasonable expectation of material impact to Customer's operations. Such approval to not be unreasonably withheld or conditioned.
5. **Customer Care at the Location.**
  - 5.1. *In General.* The Unit(s) is/are entrusted in Customer's care while at the Location. While any Unit is at the Location, Customer shall be responsible for protecting such Unit from damage, modification, vandalism, interference, or destruction (excluding any damage, modification, or destruction solely and to the extent caused by the SP Entity or defect in the Unit itself), ensuring interconnected systems are performing reliably, safely, and effectively with related services not adversely impacting Expected Use defined in the SA.
  - 5.2. *Obstructions; Interference.* Customer will keep all areas in and around the Unit(s) free from any obstruction or interference that may impair the Unit(s) performance, installation, access, maintenance, or removal. Except as otherwise provided by the Agreement or otherwise authorized by the SP Entity in writing, Customer will not allow any service, alteration, modification, interference, or other infringement upon the Unit(s).
  - 5.3. *Insurance.* Should the Customer not obtain and maintain (as primary insurance for the SP Entity and Customer as co-insureds as their interests may appear in the Agreement) reasonable insurance coverage, including, liability insurance and insurance against loss or damage to the Unit(s), in such amounts and coverages, in such form and with such insurers as are reasonably satisfactory to the SP Entity and that will name SP and the SP Entity, its successors and/or assigns, as loss payee and additional or co-insured with a certificate evidencing the same as to each policy, SP Entity shall have the right to obtain such insurance while the Unit(s) is/are at the Location and, to the extent not prohibited under applicable Law, and add its pro-rated cost of such insurance to the USA Payments due to the SP Entity. The applicable certificates of insurance will expressly provide that the Customer's policies may not be terminated or permitted to lapse or significantly modified without giving the SP Entity at least 30 days prior Notice.
  - 5.4. *Connectivity.* When required for the project and in accordance with all Location security protocols, Customer will provide, at no cost to SP Entity, continuous Internet access to the Unit(s) at the Location during the Term to enable the SP Entity to monitor and collect data to facilitate reliability, maintenance, performance, usage, and replacements, as well as supporting initiatives, such as demand response, benchmarking, and forecasting. SP Entity agrees to use diligent and reasonable efforts to comply with Notices regarding the protection of Customer's internal data and systems.
  - 5.5. *Access.* During the Term of the Agreement and for 120 days thereafter, to the extent not prohibited under applicable Law, and in accordance with all Location security protocols, the SP Entity and its agents, employees, affiliates, suppliers, contractors, subcontractors, lenders, and insurers may enter and access the Location to perform activities contemplated by the Agreement and, if necessary, to protect the SP Entity's interests in the Unit(s). Notwithstanding the foregoing, Customer may, upon at least three business days prior Notice to the SP Entity identifying the relevant details, reject specific personnel who have previously failed to comply with codes of conduct or other similar policies applicable to Customer's personnel at the Location.
6. **Ownership & Reporting.**
  - 6.1. *SP Entity Ownership.* To the fullest extent not prohibited by applicable Law, the SP Entity owns and will continue to own all title and legal and beneficial ownership interests in the SP Entity funded Unit(s). All SP Entity funded Unit(s) and other assets of the SP Entity used in performing the Services will remain the sole property of the SP Entity, and will not be deemed attached to, a part of, or fixture to, the Location. All tax filings, reports and other documentation shall be filed accordingly in a timely and consistent manner. Customer is entrusted with possession of the SP Entity funded Unit(s), without the transfer to Customer of any ownership interest therein, only to use those Unit(s) at the Location during the Term. Customer's continued operation of the Unit(s) is expressly conditioned on Customer's timely payment of USA Payments. During the occurrence and continuation of a Payment Default, or following a termination of the Agreement as a consequence thereof, SP Entity may, subject to applicable Law, exercise and enjoy all of the attributes of ownership of, and full dominion and control over the Unit(s), including preventing Customer (and all other Persons), by all legal means to enter onto, have access to, use or operate the Unit(s). Except as expressly provided in the Agreement, the Agreement will not be construed to transfer any ownership or control of SP Entity funded Units(s) nature or method of use. In the event of a Bankruptcy Trigger with respect to the Customer or the SP Entity, the other Party shall be treated as a licensee of the Unit(s) under and pursuant to 11 U.S.C section 365(n) when in the United States or similar legislation if such bankruptcy proceeding occurs elsewhere. In the event of a Liquidation Act with respect to either Party, the non-Liquidation Act Party shall have an option for the Disposition of any affected Units on an "AS-IS", "WHERE-IS", "WITH ALL FAULTS", and "WITHOUT WARRANTY OF ANY KIND" basis for a Disposition Fee of \$1.00.
  - 6.2. *Ownership Notice Filings.* The SP Entity may file or record any documents or instruments, including registering the SP Entity's interest with the applicable Filing Methods to give third parties notice that the SP Entity is the owner of the SP Entity funded Unit(s). Only where the Customer owns the Unit(s), has an outstanding Iaal amount, there has been a Payment Default with respect to any amount payable to the SP Entity or the SP Entity has a concern the Customer may be deemed the Unit(s) owner without the Agreement being terminated, to the extent not prohibited by applicable Law: (a) the Customer grants the SP Entity continuing security interests and liens sufficient to be reasonably collateralized for the Agreement obligations with the right to have filed any documents to aid in creating, perfecting, maintaining, and/or protecting these interests and their priority; and (b) Customer must obtain SP Entity written consent prior to any collateral transfer, encumbrance or similar limitation.
  - 6.3. *Incentives.* Unless otherwise specified in the applicable SA, during the Term of the Agreement the Customer shall be responsible for obtaining and may receive all Incentives with respect to the Unit(s). Customer agrees to inform the SP Entity on a timely basis of all Incentive related communications that may affect obtaining such Incentives after the Term of the Agreement. SP Entity retains the economic benefits from activities independent of the Customer such as depreciation, financial restructuring, cash discounts, volume incentives, training credits, leverage, and investments. When Incentives are factored into the Usage Rate(s), and the Incentive is denied in part or whole or the subject of recapture, Customer will either agree to the revision of the Usage Rate(s) or pay for the loss of such Incentive.
  - 6.4. *No Liens by Customer.* Customer will not directly or indirectly cause or create any Lien on or with respect to any Unit(s) that are SP Entity funded or any asset that is a Revenue Share Source or that a Party has a usage right in except as otherwise agreed in writing by the Parties, and, to the extent not prohibited under applicable Law, will indemnify SP and SP Entity against all costs and expenses (including attorneys' fees and costs) incurred by either SP or the SP Entity in connection with endeavoring to discharge, release or terminate such encumbrances or in litigating to quiet title as to or relating to any Liens.
  - 6.5. *Reporting.* Customer shall accurately and timely document, collect, maintain, and file all government reporting regarding Unit(s) related to safety, use, maintenance, warranty, emergency response, operators, permits, complaints, accidents, and performance with copies simultaneously sent to SP Entity.



**Exhibit 1**  
**General Terms and Conditions**

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- 6.6. *SPS*. Customer acknowledges that the SP Entity will engage Sustainability Partners Services LLC (“SPS”) to perform certain contractual requirements for the SP Entity under the Agreement and use SPS as the IS for the Unit(s) UL. In the event of an SPS uncured default of its material contractual obligations with respect to a NtP, SP Entity shall have the right to replace SPS as IS for such NtP subject to Customer approval, which such consent shall not be unreasonably withheld.
7. **Major Maintenance / Renewal.**
- 7.1. *Unit Major Maintenance / Renewal (MMR)*. During the Term of the Agreement and prior to any Unit Disposition to Customer, should either Party provide Notice of having material concerns over any and/or all Units reliability, safety, performance, maintainability, or effectiveness, then a curative MMR event shall be deemed to have occurred (an “**MMR Event**”).
- 7.2. *Performance Default*. If within a reasonable time after Notice of an MMR Event, the SP Entity fails to provide a CO or other solution to address the MMR Event and Customer does not provide a timely and SP Entity approved alternative solution to the MMR Event or if the Customer fails to approve the proposed CO or objects to use of the Support Reserve for involved DTC costs, then the Agreement will be deemed to be in Performance Default.
- 7.3. *Install Date*. The applicable Install Date for any Renewed Unit(s) shall be the date of the CoA (or deemed delivery of the CoA) of the Renewed Unit(s) in accordance with Section 3.13. The UL for Renewed Unit(s) shall be updated based on the date of CoA (or deemed CoA) of the Renewed Unit(s) characteristics, and the material and labor portion of Unit(s) Actual Cost shall equal the new cost plus where MMR Event occurs prior to the expiration of the old UL, the revised Actual Cost relating to the Unit(s) prior to replacement ((old UL - amount of UL used at MMR Event) / old UL) \* old Unit(s) Actual Cost). Should annual USA Payments be less than required to cover SP Entity obligations, SP Entity may apply the Support Reserves to reduce the difference.
8. **Minor Maintenance / Care.**
- 8.1. *Minor Maintenance / Care (MMC)*. Customer shall be solely responsible to Operate the Unit(s). Notwithstanding the foregoing, the SP Entity shall have the right, but not an obligation, to cause the MMC to be performed, in collaboration with the Customer, to the extent SP Entity deems necessary or appropriate in its sole discretion to keep the Unit(s) in a State of Good Repair, the cost of which shall be included as Support Costs and reduce the Support Reserves accordingly.
- 8.2. *Approved Vendor*. Except as otherwise provided in the Agreement, Customer will restrict performance of the MMC to one of the AVs. Either Party may request by written Notice to have a new AV be added to the AV list. If the other Party fails to respond to such Notice within 10 business days, then such suggested AV shall be deemed to have been added to the SA list of AVs. Customer and SP Entity agree that only AVs may be used for Unit related repairs.
- 8.3. *Unit Critical Repair*. Should a Unit that is needed immediately be inoperable, and no AV is available to affect an immediate repair, Customer or SP Entity, as applicable, shall use their best judgment in causing the Unit to be immediately repaired by a non-AV vendor using the same standards as provided in Section 8.5(b) with such repair being paid for through the Support Reserve.
- 8.4. *MMC Agreements*. MMC will be performed pursuant to a written agreement between either SP Entity or Customer (as determined by the related SA) and an AV that has been approved by both Customer and SP Entity (a “**MMC Agreement**”), such approval not to be unreasonably withheld or delayed. If a Party fails to respond within 10 business days of receipt of a proposed MMC Agreement, that Party’s approval will not be required for such MMC Agreement. The non-contracting Party shall be an express third-party beneficiary of the MMC Agreement and the AV’s warranties, guaranties, and obligations with respect to the Unit maintenance, and shall be independently entitled (without obligation) to enforcement thereof.
- 8.5. *AV Replacement*. If Customer or the SP Entity determines that an AV cannot reasonably be relied upon to perform Unit care consistent with adequate quality, reliability, or efficiency, or following a Material MMC Cost Increase, then
- a) MMC will be performed by a different AV identified on the SA, and
- b) Customer and the SP Entity will jointly endeavor to identify a replacement AV capable of performing Unit care with the appropriate quality, reliability, and efficiency at the lowest applicable cost, and
- c) the Parties will update the SA to reflect any such different AV and the applicable Material MMC Cost Increase.
- 8.6. *Material MMC Cost Increases*. If Customer becomes aware of a Material MMC Cost Increase, Customer will promptly notify the SP Entity in writing, as promptly as reasonably possible, before contracting with the AV for further Unit MMC.
- 8.7. *Inspection of Unit MMC*. At its discretion, with reasonable prior notice to and coordination with Customer, the SP Entity and IS shall always have reasonable access to the Location as may be necessary and/or appropriate to inspect the Unit MMC work performed or being performed. If the AV has not performed the Unit MMC work in accordance with the MMC Agreement and in accordance with applicable industry standards,
- a) Customer will cause the AV to diligently cure such conditions, and
- b) the SP Entity may suspend its obligations until the AV has cured such conditions. Items removed by the AV in connection with Unit care will be held by Customer for further instructions from the SP Entity regarding their inspection, collection and/or disposition.
9. **Reserves and Costs.**
- 9.1. *Resiliency Trigger*. “Resiliency Trigger” means the trigger identified in the SA where the Customer approves the SP Entity to make a good faith effort to provide temporary substitutes reasonably equivalent to the existing Units(s) whose usage became unavailable and to add any associated DTCs to the associated months’ USA Payment. If a non-AV is used, then the Customer may decline payment of those DTCs in excess of what the reasonable costs would have been if an AV had been used unless the SP Entity has obtained Customer approval for such excess costs.
- 9.2. *Support Costs*. “**Support Costs**” means any Unit MMC, MMR and Support to be paid by the SP Entity that are DTCs. All other internal or other costs incurred by Customer are excluded from any payment obligation of the SP Entity. Customer is responsible for the operation, service, and safe keeping of the Unit(s). Accordingly, Support Costs exclude, and Customer (and not the SP Entity) shall be responsible for, the costs of any Unit MMC or MMR Event, including those in any way due to, arising, or resulting from improper operation, improper environmental controls, improper service, vandalism, Force Majeure Event, abuse, negligence, or willful misconduct by Customer or any third party, or a breach of the Agreement by Customer and said costs shall be paid forthwith and prior to any Remaining UL determination. For any Unit MMC and MMR Event (including associated costs of diagnosis and correction) for which the SP Entity pays but is not responsible for paying as Support Costs, Customer will pay the SP and the SP Entity’s associated out of pocket costs and expenses. Additionally, Customer and the SP Entity are responsible for appropriate planning and coordination of MMC and MMR Event services.
- 9.3. *Creation of Support Reserves*. To support the reliability, durability, and safety priorities established by the Parties. As specified in the NtP, SP Entity will initially fund the MMC’s and MMR’s initial dollar and add additional funds periodically (Period) to maintain the Minimum, furthermore, a portion of the USA Payments may be applied to fund the Support Reserves, which Customer’s contribution amount shall be determined in the applicable NtP. The SP Entity may invest reserves created by the Agreement into instruments reasonably equivalent to those with AA+ rating, the net proceeds of which will be retained by the Support Reserve.

**Exhibit 1**  
**General Terms and Conditions**

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- 9.4. *Payment of Support Costs.* The SP Entity shall pay Support Costs associated with the Unit(s) from the associated Support Reserve. If the Support Reserve is insufficient to fund certain Support Costs, then the SP Entity shall provide the Customer with a CO to pay for the excess Support Costs by adjusting either Unit(s) Usage Rates, Availability charges or additions to the monthly USA Payment. Should the Customer not provide timely approval or advance payment of the excess Support Costs, the SP Entity may terminate the Agreement. Unless specifically waived by the SP Entity, the SP Entity's payment of Support Costs shall be conditioned upon:
- a) such Support Cost payment being actually due to an AV and being fully covered by the Support Reserve,
  - b) the absence of any existing or knowingly pending disputes between the Parties,
  - c) compliance to SP Entities usual and customary processes for vendor procurement, authorization, verification, billing and payment.

10. The Term.

- 10.1. *Commencement of Initial Term.* The Initial Term commences upon CoA in accordance with Section 3.13. The duration of the Initial Term and any Additional Terms are set forth in the SA. If Customer is the Initial Funding Entity, the Initial Term shall be for the period equal to the Unit's remaining UL.
- 10.2. *Renewal/Nonrenewal for Successive Terms.* The Initial Term will automatically extend for successive Additional Terms, unless Customer has given SP Entity written nonrenewal notice at least 30 days prior to the commencement of the applicable Additional Term. So long as there have been no Payment Defaults within the past 12 months and installation of all the Units in the SA has been completed, the Customer Notice of nonrenewal serves as Notice for a Customer's termination for convenience of the Agreement.

11. Changes.

- 11.1. *Unused Contingencies.* In the event there are unused Installation contingencies reserves 90 days after a final CoA for a complete Installation, the Customer shall elect to either: (1) add any unused contingency funds to the Support Reserves; (2) receive the unused contingency funds directly; or (3) apply unused contingency funds to the monthly USA Payments.
- 11.2. *Support Reserve Adjustments.* The annual increase contribution to Support Reserves due to Rate Index adjustments shall be as defined in the SA.
- 11.3. *Usage Rate Adjustments.* Prior to any change in Usage Rate(s) due to this Section 11.3, (a) the effective date for any such change will not be earlier than 30 days following Notice thereof and (b) Customer will have the right to terminate the Agreement upon Notice before the adjustment takes effect.
- a) *Compliance Costs.* In the event of any change in applicable Laws regarding the Unit(s), the Location or the Agreement, Customer will either (a) promptly pay the full amount of the DTCs of complying with such change, or (b) agree to an adjustment to the Usage Rates(s) determined by the SP Entity for which the proportional increase may not exceed the percentage represented by such compliance costs relative to the sum of the Unit's Actual Cost.
  - b) *Customer Viability.* During a period where Customer's credit rating or letter opinion becomes speculative by a credible credit rating service, the SP Entity may reasonably adjust the Unit's Usage Rates and/or Lowest Expected Use which shall be effective upon delivery of the first invoice calculating such change(s).
  - c) *Location.* After NtP, should there be a material change to the use of a Location that was not Noticed by the Customer to the SP Entity, such as early termination of a major lease or significant change to the Location's specific purpose, then the SP Entity shall be entitled to a Change Order pursuant to Section 3.5 adjusting the applicable SA terms and rates to reflect such material change.
  - d) *Reduction Payment or "RP".* At Customer's sole option, starting on the 4 year anniversary from the a Unit's Install Date, the Customer may once a year, propose to make an additional payment, a a "Reduction Payment") of no less than 10% of the Unit's Actual Cost and no more than 33% of the Unit's Actual Cost. Following receipt of such a proposal for a Reduction Payment, if accepted, the SP Entity shall provide Customer with a CO containing updated Usage Rates (contingent on receipt of the Reduction Payment) determined by the SP Entity with the goal of achieving economics consistent with the methodology used to establish the Usage Rates in the existing SA but not exceeding the Return Limit.
  - e) *Usage.* Upon Customer's written request (no more than once annually) or if an annualized Unit's use over any 3 months of a 12-month period has been or is expected to be less than 87% of the Expected Use over the remaining UL, the SP Entity may adjust the Unit's Usage Rate, Availability and/or Lowest Expected Use to reflect changed expectations. Where Unit(s) are part of a Rights Fee and the reduction in Unit's use or net revenue share is material, the SP Entity may elect to terminate the Agreement.
  - f) *Rate Indexing.* At the beginning of each year following the end of the Starting Year, the components of the USA Payment may be adjusted by the Rate Index averaged over the Smoothing period and aggregated from last adjustment and applied as identified in the SA.

12. Limitations on Liability.

- 12.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR OR IMPLIED IN ANY AGREEMENT OR UNDERSTANDING AMONG THE PARTIES, TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW:
- a) NONE OF THE SP ENTITY, SP, OR ANY OF THEIR RELATED PARTIES BE HELD LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR HARM TO REPUTATION) ARISING FROM, OUT OF OR IN CONNECTION WITH THEIR PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT
  - b) AGGREGATE LIABILITY UNDER THE AGREEMENT ARISING FROM, OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT SHALL EXCEED THE TOTAL USA PAYMENTS ACTUALLY PAID TO THE SP ENTITY UNDER THE AGREEMENT DURING THE 12 MONTHS PRIOR TO THE DATE ON WHICH SUCH LIABILITY WAS CREATED. THE USAGE RATES REFLECT, AND ARE DEPENDENT UPON, THE FOREGOING LIMITATIONS OF LIABILITY.
  - c) None of the SP Entity, SP, or any of their related parties shall make any claim, representation or warranty, either express or implied, as to the fitness for a particular use or otherwise, quality, design, condition, capacity, suitability, accounting, merchantability or performance of the Unit or the services. EACH UNIT IS PROVIDED "AS IS." CUSTOMER ACCORDINGLY AGREES NOT TO ASSERT ANY CLAIM OR OFFSET WHATSOEVER AGAINST THE SP ENTITY BASED THEREON.
- 12.2. Upon delivery of the Unit(s) at the Location, Customer will be solely responsible for the Unit(s)' compliance with applicable Laws, Customer or manufacturer requirements, standards and policies, or any other applicable requirements and hereby assumes and will bear the entire risk of loss and damage to the Unit(s) from any cause whatsoever, regardless of whether the loss is insured. In the event of loss or damage to the Unit(s), Customer, at the option of the SP Entity, will (a) repair or replace the same to restore the Unit(s) to good condition and working order; or (b) replace the same, with like property of the same or greater quality and functionality.

**Exhibit 1**  
**General Terms and Conditions**

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12.3. Notwithstanding anything to the contrary provided for or implied in the Agreement, the terms of this Section 12 shall survive any termination of the Agreement, regardless of cause or purpose.

**13. Default; Remedies.**

- 13.1. *Customer Payment Default.* Unless SP Entity receives a good faith Notice from Customer within 20 days of invoice receipt (i) describing in reasonable detail a dispute specific to the invoice amount and (ii) the undisputed portion has been paid in full, the entire invoice is deemed approved. Each invoice approved (or deemed approved) that remains unpaid within 10 business days after the due date will be deemed a default hereunder a (“**Payment Default**”) allowing the SP Entity to seek collection of payment and terminate the Agreement upon Notice to Customer. Furthermore, Customer agrees to use best efforts to accomplish and/or support the safe implementation of any restrictions to use and/or access to the Unit(s) specified by the SP Entity during the occurrence and continuation of a Payment Default and to promptly reimburse the SP and the SP Entity for their related direct and indirect costs. Furthermore, Customer agrees it is its responsibility to minimize all direct or indirect harm related to a Payment Default.
- 13.2. *Performance Default.* If a Party fails to substantially perform any material obligation other than payment under the Agreement (a “**Performance Default**”) and fails to cure such Performance Default within 10 business days after Notice thereof, the non-defaulting Party may terminate the Agreement upon Notice to the other Party.
- 13.3. *Specific Performance/Injunctive Relief.* The SP Entity shall be entitled to seek specific performance or injunctive relief as a remedy for any Payment Default.
- 13.4. *Exclusive Remedies.* The remedies expressly provided in the Agreement are the sole and exclusive remedies of the Parties in connection with breaches of the Agreement, provided that the Parties will at all times maintain the right to not extend the Agreement at the end of the Initial Term or Additional Term, as applicable, and further provided that the foregoing remedies are in addition to any late fees and accrual of interest expressly provided elsewhere in the Agreement.

**14. Obligations Following Termination.**

- 14.1. *Disposition upon Termination.* Except to the extent otherwise required in this Section 14, upon a termination of the Agreement for any reason, Customer will immediately (a) if the Agreement expressly provides that Customer has a “Right of Return” (“**RoR**”), (where the Certificate of Acceptance has been fully executed or deemed executed and all USA Payments have been received by the SP Entity), uninstall and deliver all Unit(s) and all property of the SP Entity in Customer’s possession or control, to locations identified by the SP Entity but no further than the Unit(s) manufacturer’s closest reconditioning center, at Customer’s sole expense, in undiminished performance or aesthetics from initial installation, using manufacture compliant packaging and documentation sufficient for individual resale, within 10 business days, or (b) effectuate Disposition of Unit(s) to Customer within 45 business days as provided in Sections 14.2 and 14.3 below, as applicable and execute a General Release.
- 14.2. *Termination.* Upon a termination of the Agreement for any reason, Customer shall pay the aggregate of any Deferred USA Payments plus:
- a) *LaqU Addendums:* Any Disposition of an SP Entity owned Unit(s) to the Customer shall be on an “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and “WITHOUT WARRANTY OF ANY KIND” basis from the SP Entity. Customer will receive rights to Unit warranties and Unit maintenance agreements. Customer shall pay a disposition fee for the Disposition of each Unit(s) for an amount of no less than \$1 as calculated in (i) and (ii) below:
- (i) the Unit(s)’ Actual Costs not covered by the Support Reserve multiplied by the fraction represented by the Unit’s (i) Remaining UL divided by (ii) Remaining UL plus its Qualified Usage for all Unit(s);
- (ii) in lieu of Section 14.2(a)(1), either Party may elect to use the Unit’s Actual Cost – Total Depreciation + Public Benefit Offset (as applicable, the “**Disposition Fee**”).
- b) *Rights Fees and Laal Addendums:* Customer shall pay the aggregate of any Unredeemed Disbursements.
- 14.3. *Unit Disposition upon Other SP Entity Termination.* Subject to and without limiting any other provision providing for the Disposition of the Unit(s) on different terms, upon a termination of the Agreement by the SP Entity without cause, Customer will receive Disposition of any affected Unit(s) funded by the SP Entity (in lieu of any uninstallation, removal or collection of the Unit(s) otherwise contemplated by the Agreement) on an “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and “WITHOUT WARRANTY OF ANY KIND” basis for a Disposition Fee of \$1.00, if so elected in writing by the SP Entity in its sole discretion.
- 14.4. *Survival and Other Continuing Obligations.* For clarity, no termination of the Agreement will relieve Customer’s obligation to pay all USA Payments through the date of termination, incur and pay additional USA Payments if Usage continues, any other charge(s) that Customer has incurred under the Agreement, applicable Customer’s indemnification obligations under the Agreement, or the SP Entity’s obligation to pay amounts due to Customer prior to termination (together with all provisions of the Agreement that relate to the enforcement of rights and remedies) which shall also expressly survive any termination of the Agreement until all of such obligations have been satisfied in full.
- 14.5. *Termination of Further Payment Obligations.* Upon termination of the Agreement, SP and the SP Entity will not be liable for payment of any installation, material, freight, restocking fees, cancellation charges, warranty, permits and maintenance cost or other costs not actually performed prior to such termination.
- 14.6. *Reserve Surplus.* To the extent the Support Reserve has a positive balance upon a termination of the Agreement, such amount shall first be applied to satisfy any unpaid obligations of Customer to the SP Entity and thereafter any remaining amount shall be distributed by the SP Entity to Customer or used to offset the Disposition Fee.
- 14.7. *Offsets.* Customer agrees the SP Entity shall be due the Disposition Fee upon termination of the Agreement for any reason, which fee will only be reduced or limited by applying any USA Payment overpayments or Support Reserves to limit SP Entity return on capital to the Return Limit.

**15. Dispute Resolution; Governing Law.**

- 15.1. *Governing Law; Jurisdiction.* The laws of the Dispute Resolution Location will govern the terms of the Agreement without giving effect to conflict of laws principles. Subject to Section 15.2 below, each Party consents to the exclusive Venue Jurisdiction. Each Party will bear its own costs for any disputes arising under the Agreement, provided that a prevailing Party shall be entitled to reasonable attorney’s fees, costs, and necessary disbursements in addition to any other relief to which such Party may be entitled.
- 15.2. *Arbitration.* For Customers that are not Governmental Entities, any claim or dispute directly or indirectly arising from or relating to the Agreement or any related actions or omissions that are not claims of equitable relief or claims of provisional remedy shall be subject to arbitration in the Dispute Resolution Jurisdiction. The arbitration shall be administered by a JAMS Neutral and in accordance with JAMS comprehensive rules and procedures. Judgment on any award rendered in such arbitration shall be binding upon the Parties and may be entered in any court having jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO LITIGATE MATTERS IN COURT, INCLUDING ANY RIGHTS TO TRIAL BY JURY, AS PROVIDED HEREIN.

**Exhibit 1**  
**General Terms and Conditions**

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- 15.3. **Unit Stewardship.** Upon Notice of termination, while there is an outstanding Disposition Fee or USA Payment that is due to the SP Entity, regardless of any outstanding dispute, the Customer agrees to safely prevent all usage of the involved Unit(s), minimize any related costs and disruptions, perform reasonable and customary MMC, enable the SP's Entity periodic verification and take sole responsibility for all resulting costs and adverse impacts.
16. **SP Entity Agent.** The Parties acknowledge and agree that, unless otherwise directed in writing by the SP Entity, the SP Entity has authorized SP to give and receive notices, invoices, and collect payments, make SP Entity decisions contemplated by the Agreement, give instructions contemplated by the Agreement, and take SP Entity actions contemplated by the Agreement.
17. **Nature of Agreement.** The Parties acknowledge and agree that exclusive control of Unit(s) nature and manner of use is held by the Unit(s) funder.
18. **Representations** Each Party represents and warrants that the Agreement is valid, binding, and enforceable against it in accordance with its express terms. Customer represents and warrants that the Agreement has been duly authorized and executed and that Customer is fully empowered to perform its obligations under the Agreement in accordance with the terms herein and applicable Laws (including with any articles, charter or other organizational documents or authorities applicable to Customer). Following the full execution of the applicable NtP, each Party further represents and warrants that the applicable SA and NtP (and any COs thereto) are valid, binding, and enforceable against it in accordance with its express terms, and Customer represents and warrants that the same have been duly authorized for execution and performance in accordance with applicable Laws and with any articles, charter or other organizational documents or authorities applicable to Customer. The same representations and warranties shall apply to any SA, NtP, CO, CoA or ACH Agreement or other instrument signed by the Customer thereafter. Each Party further represent, warrants and agrees that no re-characterization or other change in meaning or effect from what is stated in the Agreement is permitted.
19. **Independent Investigation.** Each Party acknowledges that it has been afforded the opportunity to ask all questions and make such inquiries as it deemed necessary in order to determine the benefits and risks of entering into the Agreement, and had the opportunity to be represented by counsel in connection with the Agreement and the transactions contemplated by the Agreement. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of the Agreement against such Party based upon lack of legal counsel or disclosure of all material risks shall have no application and are expressly waived. Customer further acknowledges that SP, including any of its representatives, is not a financial or municipal advisor to the Customer, nor is acting as a fiduciary or other similar capacity to the Customer. Customer has been advised by SP to seek legal, financial and tax advice, and engage its own municipal advisor, as appropriate.
20. **Closing & Estimating Costs.** Customer shall be solely responsible and liable for (either by direct payment or by reimbursement of amounts paid by the SP Entity) all Closing Costs. Upon Customer requesting a pre-termination Disposition Fee, Customer shall prepay the SP Entity's estimated cost for providing the requested information which shall not exceed six times the prior year's average USA Payment.
21. **Intellectual Property.** As between the Parties, each Party shall solely retain all their copyrights, trade secrets, patents and other intellectual property rights owned, held, licensed, or developed. Nothing in the USA Service or any Services shall be deemed a "work for hire".
22. **Force Majeure.** Except as expressly otherwise provided, neither Party shall be liable to the other to the extent it is unable to perform its obligations under the Agreement due to an FME; provided that this shall not relieve the Party claiming a FME from performing under the Agreement once the event giving rise to FME no longer exists. In the event the Customer decides to terminate the Agreement related to an FME, the Customer's obligations under Section 14 still apply.
23. **Entire Agreement; Amendment.** The Agreement, including these General Terms and any other incorporated exhibits and riders, completely and exclusively constitutes the entire understanding of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. Except as otherwise specified in the Agreement, the Agreement may be modified only by a document signed by both Parties, and no obligation or duties shall be implied, because such implication would be contrary to the Party's intention to have their entire agreement expressed in writing.
24. **Agreement Transfer.** The Agreement may not be transferred, in whole or in part, by any Party without the other Party's written consent. In the event of a permitted transfer of the Agreement, references to the assigning Party shall be deemed to refer to the permitted transferee, except to the extent the applicable language or context require otherwise.
25. **Non-Profit Customer.** If Customer is a non-profit entity, Customer will either terminate the Agreement or obtain the SP Entity's prior approval to a Location change of ownership or a Customer change of control.
26. **Severability; Interpretation.** If any provision of the Agreement is found unenforceable or invalid, such unenforceability or invalidity will not render the Agreement unenforceable or invalid as a whole; provided that each provision that is so found to be unenforceable or invalid because of the amount or size of the burden or benefit shall be automatically reduced to the extent and by such amount such that the burden or benefit becomes enforceable and valid, and, in particular, the amount or size of any such burden or benefit provision found to be so invalid or unenforceable shall be read, notwithstanding any other provision of the Agreement, as if such provision read "to the maximum extent permitted by applicable law". This Agreement is expressly intended to comply with the provisions of applicable Law and shall be construed and interpreted to the fullest extent by law to be consistent with such Law and shall be deemed reformed to the extent necessary to ensure to compliance. The section headings in the Agreement are only for convenience of reference and are not to be considered in the interpretation of the Agreement's provisions.
27. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, the Agreement and all associated rights are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any third-party. A Party's failure to exercise their rights does not mean the rights are waived for themselves or any other Party. Notwithstanding the foregoing, third parties are authorized to make independent procurement purchases from the Agreement pursuant to Customer's applicable procurement provisions, if any, and subject to the formation of an independent agreement between SP and a third party. The Customer's consent is not required for the SP Entity to assign, transfer, pledge, or encumber all or any portion of its rights in any USA Payment.
28. **Marketing.** Until the termination of all Agreements, SP may display SP's logo and name directly on the Units for identification purposes and use Customer's logo and name in connection with SP's advertising and marketing.
29. **Notice.** Any "Notice" shall be sent in writing to each Party's address and email address listed in the Agreement, or as subsequently updated by written notice.



**Glossary.** Capitalized terms not otherwise defined in the Agreement have the following corresponding meanings:

- “**ACH**” means the method of SP Entity obtaining a Customer payment as authorized by an ACH Agreement substantially in the form of Exhibit 5. Except as otherwise expressly provided in an SA, Exhibit 5 shall be executed by the Parties as a condition to the SP Entity’s obligations under the applicable SA.
- “**Agreement**” means this written agreement between the Parties comprised of the applicable combination of these General Terms, SA(s), NtP(s), CO(s), and Certificate(s) of Acceptance where each combination forms a separate Agreement from any other Agreement.
- “**Assignment**” means the transfer and acquisition of ownership.
- “**Availability**” means the cost of the Unit being available for Customer use, excluding scheduled maintenance, where the Unit materially meets the vendor performance criteria. Availability equals Availability Rate \* # of Availability Units, plus the cost of Units’ associated taxes, permits, reporting, and monitoring.
- “**Availability Rate**” means a rate assessed per Availability Unit, as determined in the SA.
- “**Availability Unit**” specifies, as determined in the SA, what measurement determines the Availability Rate (Examples are: Hour / Day / Month).
- “**Bankruptcy Trigger**” means in a bankruptcy proceeding under the U.S. Bankruptcy Code when in the United States and when in Canada under the federal *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”), the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”), or any similar legislations.
- “**Change Order**” or “**CO**” means a fully executed written agreement between Customer and the SP Entity to modify the Agreement.
- “**Claim**” means any claim, loss, liability (including negligence, tort, and strict liability), damages, penalty, equitable relief, judgment, suit and any legal proceeding, and all costs and expenses incurred or suffered in connection therewith (including reasonable attorneys’ fees and expert fees).
- “**Closing Costs**” means all closing costs incurred in connection with the consummation of the installation, including customary closing costs, taxes (other than income taxes), citations, fines, fees, and permits and other costs as listed in the applicable NtP or incurred from time to time during the term of the Agreement.
- “**Connect Fee**” means the non-refundable amount charged to Customer upon NtP, as defined in the SA, for Unit(s) use.
- “**Customer Funds**” means funds provided by Customer with no repayment obligations, restriction on use or covenants.
- “**Deferred Catchup**” means the amount of outstanding Deferred USA Payment amounts divided by remaining months of UL as determined by SP Entity unless otherwise specified in the SA.
- “**Deferred USA Payment**” means the amount of USA Payments Customer is charged for deferring USA Payments for a specified deferral period based on variables defined in the section of the SA entitled “Payment Deferral Terms”.
- “**Delinquency Rate**” means the rate of interest which is the lesser of (i) 1.5% per month on the entire amount owed based upon a 360-day year calculated for the actual number of days elapsed and compounded monthly in arrears or (ii) the highest interest rate otherwise permitted by applicable Law.
- “**Direct Third-Party Costs**” or “**DTC**” means direct third-party out-of-pocket SP Entity obligations where the SP Entity is the Initial Funding Entity with respect to taxes, permits, insurance, Support, Installation, Connect Fee, and Vendor Contracts but excludes both Customer’s internal costs and SP Entity member costs.
- “**Disposition**” means the selection in the SA of either a Sole Use License or an Assignment upon termination.
- “**Dispute Resolution Location**” means Arizona unless Customer is a Governmental Entity, in which case will mean the state, province or territory where the Location is situated as specified in the SA.
- “**Estimated UL**” or “**EUL**” means the estimated useful life of the Unit(s) as set forth under the heading “Estimated UL” in the NtP.
- “**Essential Utility Service**” means a service being delivered by infrastructure for Customer’s use such as: energy, water, transportation, sewer, facility, computing, lighting, HVAC, storage, grounds, or communications.
- “**Filing Methods**” means the ownership statements or fixture filings as per the Uniform Commercial Code when in the United States and the Personal Property Act legislation when in Canada or such other similar filings or registrations under other applicable Laws.
- “**Force Majeure Event**” or “**FME**” means any event, circumstance, series of events or set of circumstances beyond the reasonable control of, and caused without the action, fault or negligence of, the Party claiming the occurrence of such event or circumstance, such as acts of insurrection, terrorism, war, riot, strike, explosion, fire, lightning, earthquake, floods, hurricanes, tropical storms, cyber-attack, epidemic, natural disaster or the unavailability of electricity, gas or other utility services, goods, or suppliers on commercially reasonable terms.
- “**General Release**” means that to the extent permitted under applicable Law, a general release of all claims and liabilities against SP and the SP Entity that is in form and substance satisfactory to the SP Entity (including a waiver of California Civil Code Section 1542 and any similar other law of any jurisdiction, if applicable), of known or misunderstood claims or causes of action whether known or unknown, whether absolute, contingent, inchoate or otherwise characterized, and whether liquidated or unliquidated.
- “**Governmental Entity**” means any federal, state, county, province, territory, municipality, or local governmental department, political subdivision or agency.
- “**Iaai**” means infrastructure as an investment by the SP Entity where the Customer uses the investment proceeds to acquire and own Unit(s).
- “**IaaU**” means infrastructure as a utility where the Unit(s) identified in the SA have their MMR and MMC managed by the SP Entity.
- “**Incentive**” means any government sourced and funded incentive, promotion, credit, or subsidy for which the Customer qualifies.
- “**Including**” always means “including without limitation”.
- “**Infrastructure Specialist**” or “**IS**” is the individual or entity whose function is to facilitate the Units(s) staying reliable, safe, resilient, and improving through the life of the Agreement. The IS may be involved in the design, engineering, monitoring, maintenance, upgrades, replacements, procurement, installation, commissioning, expansions, quotations, budgets, billing, credits, and payments to accomplish this function. The Parties agree to the timely availability of the applicable staff, and/or agents, and third parties for the IS to pursue expedient resolutions for any of the Agreement’s stakeholder’s concerns.
- “**Initial Funding Entity**” means, with respect to the Unit(s), the source of funds for SA Actual Costs incurred prior to Certificate of Acceptance.
- “**Installation**” means the installation of the Unit(s) at the Location(s) as provided in the applicable Vendor Contract.
- “**Law**” means any applicable federal, state, provincial, territorial, local or other law, rule, regulation, ordinance, zoning requirement or other legal requirement, including the Venue Jurisdiction if applicable.
- “**Lien**” means any mortgage, pledge, lien, charge, hypothecation, security interest, restriction or other encumbrance of any nature.
- “**Liquidation Act**” means in the United States Chapter 7 of the U.S. Bankruptcy Code and when in Canada the BIA.
- “**Lowest Expected Use**” for any Unit(s), defaults to Expected Use when value is zero, N/A, or undefined on the SA, and otherwise as set forth in the SA.
- “**Material MMC Cost Increase**” means any increase in an AV’s MMC costs of the relevant Unit by more than 5% over the lesser of any 12-month period or the time since the last Material MMC Cost Increase.
- “**Minor Maintenance / Care**” and “**MMC**” means the performance of warranty services, maintenance, repairs, updates, and replacements with respect to the Unit(s) for purpose of (i) cleaning, maintaining aesthetics, or routine warranty service or care, (ii) restoring Unit(s) to a State of Good Repair, (iii) performing service recommended or necessary to maintain a Unit in good working order, or (iv) other similar purposes.

**Exhibit 1**  
**General Terms and Conditions**

Sustainability as a **Service®**

- “Major Maintenance / Renewal”** and **“MMR”** means a replacement, major overhaul, substitution, or material upgrade of the Unit(s) from time to time, subject to the terms of the Agreement, to extend the Remaining UL and /or improve operating efficiency.
- “Maximum Expected Use”** has the meaning set forth in the SA or, if undefined therein, 150% of Expected Use.
- “Notice to Proceed”** or **“NtP”** means a fully executed notice to proceed with the Units identified therein, substantially in the form of Exhibit 3.
- “Operate”** means to use and have stewardship over the Unit(s) and any interdependent systems (a) in accordance with the applicable owner’s manual, manufacturer guidelines or other similar document(s) provided in connection with the Unit(s) or systems, (b) in compliance with all Laws relating to possession, operation or use of the Unit(s), and (c) in such a manner so as to ensure Unit(s) (i) remain eligible without exception for the applicable warranties, warranty agreements and insurance coverages, (ii) stay reliable, safe, and effective, and (iii) are in compliance at all times with the reasonable nature and manner of use as SP defines.
- “Party”** means Customer, SP, or the SP Entity, as applicable, and **“Parties”** means Customer, SP, and the SP Entity together.
- “Prompt Payment Act”** means applicable Laws that require the timely payment by Government Entities of valid and proper invoices.
- “Public Benefit Offset”** or **“PBO”** means, where the source of the Disposition Fee is Customer Funds, it is \$0. Otherwise, the PBO means the fair market value of the Disposition not reflected in the Unit Actual Cost less Total Depreciation formula under Section 14.2(a)(ii) to reflect the benefit and value only meant for a public type entity and as a result of investment made by the Initial Funding Entity in maintaining and improving the Unit(s). This is determined by the Excel formula of NPV (the total of Unit(s) \* ((Expected Usage\* Usage Rate) + Capacity + Availability) as an annual array over the UL, not to exceed the Return Limit).
- “Qualified Usage”** means the quantity of time constituting a portion of the original UL of the Unit(s) for which the SP Entity’s capital accounts used to fund the Unit decreases due to the making of Unit USA Payments.
- “Related Parties”** means any officer, director, employee, partner, member, manager, contractor, or agent, or any affiliate or other person or entity whose relationship to a Party is such as to create any vicarious, joint, or derivative liability or obligation or such as to subject the Party to any claim from such person or entity for equitable or implied indemnity or contribution.
- “Remaining UL”** means the remaining UL available as determined by a third party selected by SP Entity. Upon Notice to Customer of SP Entity’s elected determination, Customer shall have 5 business days to object to the determination by providing in writing specific reasons for such objection, upon which the SP Entity shall obtain a new determination.
- “Renewed Units”** means those Units that are repaired or replaced following an MMR Event.
- “Return Limit”** means the greater of the 10-year U.S. Treasury rate at the time of termination of the Agreement or at the time of a Unit(s)’ NtP, plus the greater of the Real Return Limit or 7%, used to limit the maximum, not including PBO, that the SP Entity’s capital providers may receive as a Disposition Fee in respect of a return on the Unit(s)’ Actual Cost from the net of Unit(s)’ related: USA Payments received, Support Reserves paid and Disposition Fee. Upon installation of Renewed Units, the SP Entity will in good faith adjust the new Unit(s)’ Usage Rates to factor in the Return Limit.
- “Rights Fee”** means an upfront fee paid to Customer in connection with a concession for SP Entity to receive limited but exclusive usage and data rights of the Unit(s) in the event of a Payment Default. The SP Entity’s usage right is for full control of Unit(s) access and receipt of associated revenues without disrupting the Unit(s) existing public services should Customer be in Payment Default, until cured. The SP Entity data right is for confidential, non-transferable, access and use and analysis of all performance data for the Unit(s). In consideration for this fee, Customer will pay the USA Payments set forth in the SA(s), subject to all MMR and MMC obligations.
- “SA Actual Costs”** means the cumulative Unit(s) Actual Costs plus Unredeemed Disbursements.
- “Scope Contingency”** means authorization of Customer signatory to approve changes to scope of AVs and thus Usage Rates.
- “Sole Use License”** means a license from SP Entity to Customer for their sole use and control of the Unit(s).
- “SP Recommended”** means recommended monthly reserves SP has estimated to help cover possible future MMR and MMC costs.
- “Start Date”** means the date from which Customer’s NtP is fully executed.
- “State of Good Repair”** means a state of good repair as defined in Title 49 CFR § 625.17, which is a condition sufficient for the Unit(s) to operate reliably, safely and at performance targets specified in the SA or, where undefined, in accordance with Unit(s) manufacturer specifications.
- “Supply Chain Contingency”** means authorization of Customer signatory to approve changes to AVs costs, and thus Usage Rates prior to Unit(s) CoA.
- “Support”** means administrative and management type services consistent with Title 48 CFR 31.201-3 that are provided by SP or the SP Entity to the Customer, including services related to accounting, treasury, tax, audit, compliance, insurance, reporting, legal, asset monitoring, project management, administrative matters, contract management, and IS.
- “Support Reserves”** means amounts reserved by the SP Entity for the payment of Unit MMC, MMR and Support Costs, increased by: (i) the portion of each USA Payment allocated to the Unit MMC Reserve and MMR Reserve and, (ii) 90% of the USA Payment attributable to all Unit(s) that have exceeded their UL equal to their post UL Usage plus Capacity plus Availability; and (iii) decreased by the amount of each associated Support Cost paid by the SP Entity.
- “Total Depreciation”** means (a) the summation of amounts resulting from using the Excel formula of DDB (Unit’s Actual Cost, 0, UL, UL - completed year #) where completed year # is a count of year #s where no Payment Default occurred from Unit(s) CoA to current, or (b) in the event CoA for a Unit has not occurred, zero.
- “Underwriting Contingency”** means authorization of Customer’s representative to approve changes to Unit(s) UL, Expected Usage, Lowest Expected Use, Availability, Capacity, and/or Full Capacity and thus Usage Rates prior to Unit(s) CoA.
- “Unit’s Actual Cost”** means those cumulative SA related costs, such as project, service, capital, and financial obligations, that have not been reimbursed by either Customer or Support Reserves which have been incurred directly or indirectly by SP and the SP Entity which are not sourced from a SP Entity member owned or controlled entity unless approved by SP. These costs will be reasonably allocated to specific Unit(s) by the SP Entity (including any capital costs during construction/installation). Should there be a termination event then costs shall also include those incurred or resulting from the termination, including those DTCs incurred from any Location restoration efforts or Unit recovery.
- “Units”** is the description of USA service components. All references to performance or capacity applies solely to that which may be measured at time of CoA.
- “Unit Use”** is the months’ usage quantity of Usage Units and if accurate determination is unavailable, the SP Entity shall make a good faith estimate to be trued up each January after such information becomes available. Unit Use is limited monthly to the Maximum Expected Usage, annually by the specified Full Capacity / Year, and monthly greater than the Lowest Expected Usage.
- “Unredeemed Disbursement”** means the amount the SP Entity needs to obtain to achieve a total return on capital of the Return Limit on a Rights Fee or laal upon termination.
- “Usage”** means a Unit’s Use multiplied by its Usage Rate.
- “Usage Rate”** is the cost of using a Unit per Usage Unit, as determined in the SA adjusted for any unused contingencies. This cost includes consideration the Customer considers is reasonable and satisfactory to compensate the Customer for Unit(s) being installed on their property for the purpose of generating USA Payments.
- “Usage Unit”** defines what is being measured to determine Unit Use of an individual Unit (i.e. Hour / Passenger / Gallon / MBTU / kWh / Student Day / Occupancy / Connection / MGD / etc.)

**Exhibit 1**  
**General Terms and Conditions**

Sustainability as a **Service®**

**“Useful Life” or “UL”** means the Unit(s) quantity of time or usage, as determined by the EUL, and updated through Notice due to an CO, MMC or MMR Event, which the Parties hereby agree may be used in the event of termination to calculate the Disposition Fee of the involved Unit(s) if Section 14.2(a)(ii) is elected.

**“Venue Jurisdiction”** means the State of Arizona unless Customer is a Governmental Entity, in which case the Venue Jurisdiction will mean the exclusive jurisdiction of the federal courts in the Dispute Resolution Location with each Party agreeing that the exclusive venue of such courts is convenient, proper and an integral part of the Agreement and to waive any assertion of inconvenient forum under applicable law.

**Example of Terms Defined in SA**

Approved Vendors / AVs	Full Capacity	Lowest Expected Use	Revenue Sharing Source	USA Payment
Capacity	ID #	Maximum Expected Use	Right of Return - ROR	USA Service
Carrying Charge	Initial Term	Rate Index	Self-Install	
Completion Target	Installation Limit	Real Return Limit	Smoothing	
Expected Use	Location	Resiliency Trigger	Starting Year	

**Example of Terms Defined in NtP**

Capacity	Completion Target	ID #	Initial Term	Installation Limit
MMC Reserve	MMR Reserve	Right of Return - ROR	Self-Install	USA Payment

**Exhibit 2**  
**Service Addendum (“SA”)**

Sustainability as a **Service®**

**This Document:** SA Ref #: \_\_\_\_\_ of the Master Utility Service Agreement effective on: \_\_\_\_\_, 202\_\_ for Customer: \_\_\_\_\_ . Capitalized terms used and not otherwise defined herein shall be defined in the M-USA.

**This Agreement.** Each unique combination of M-USA, General Terms, SA, NtP, CoA, and ACH Agreement constitutes a standalone binding agreement between the Customer and SP Entity (collectively, the “Agreement”).

Any amendments, waivers, or other modifications shall have effect only for the specific Agreements they occur within.

SA Type	Y/N	Amount	To	From	Trigger to disburse funds
IaaU	Y				
IaaI	N	Amount: \$ N/A	Customer	SP Entity	N/A
Rights Fee	N	Amount: \$ N/A	Customer	SP Entity	N/A
			SP Entity	Customer	“Revenue Sharing Source” is: N/A

If this SA is IaaU, the parties agree that the SP Entity is a critical supplier of essential services of material benefit to Customers constituents.

The “LOCATION”:		Venue Jurisdiction:	
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The “USA SERVICE” scope: \_\_\_\_\_  
\_\_\_\_\_.

Unit “Id #” for the USA SERVICE	Quantity	Unit descriptions for the USA SERVICE	\$ Installation Limit / Each
* A *			
* B *			
* C *			
* D *			

**The Term**

“Initial Term”:	1	Month/Years	M	“Additional Term”:	1	Month/Years	M
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\*(If Customer is the Initial Funding Entity, the Initial Term is determined based on Section 10.1 of the M-USA.)

**USA PAYMENT CALCULATION and DEFINITIONS**

“USA Payment”	is the total of Unit(s) * (Usage + Capacity + Availability) + MMC/MMR Reserves + Deferred Catchup
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Unit Id #	SP Entity Initial Funding Entity? Y/N	Rights Fee? Y/N	Unit Monthly “Capacity” Charge \$	“Full Capacity” / Year	How Usage “Unit” will be measured	Usage Unit	Usage Rate	Availability	
								Unit	Rate
* A *									
* B *									
* C *									
* D *									

**Monthly Usage of Full Capacity**

“Expected Use” =	%	“Lowest Expected Use” =	%	“Maximum Expected Use” =	%
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Customer’s signatory is authorized to approve up to any of the following cost changes:					
Scope Contingency:	=	15%	Underwriting Contingency	=	10%
Supply Chain Contingency:	=	15%			

**INSTALLATION MATTERS**



**Exhibit 2**  
**Service Addendum (“SA”)**

Sustainability as a **Service®**

“Installation Limit”: \$	TBD	“Completion Target”:	TBD	Months	Monthly “Carrying Charge”	0.85%
Usage Rates include contingencies of: \$			“Resiliency Trigger” Hours/Days/Weeks:		TBD	Days

Mutually Approved Vendors (e.g., suppliers, contractors, service/maintenance providers, resiliency providers) <b>“Approved Vendors” or “AVs”</b> means the entities listed below. The Party contracting is “S” for SP Entity or “C” for Customer			
Name	Contracting C / S	Name	Contracting C / S

**PAYMENT DEFERRAL TERMS**

Defer USA Payments by:	0%	Defer monthly Usage over:	N/A	# of months being deferred:	N/A
# of months to spread Deferred Catchup over:		N/A	Starting month # for Deferred Catchup:		N/A

“Rate Index” (select one) = U.S. Core CPI - All Urban Consumers, U.S. City Average (CUUR0000SA0) U.S. PPI - Commercial machinery repair & maintenance (PCU81138113)		PPI	Years to average for “Smoothing”	5	“Starting Year” after CoA =	2
% of USA Payment Eligible for Rate Index =		33%	% of adjustment dedicated to Support Reserves =		20%	

<b>Disposition:</b>	Upon termination perform Assignment of ownership or grant Sole Use License? (A/L)			A
<b>“Self-Install”:</b>	Has Customer opted to self-install the USA Service itself? Yes/No			No
<b>Right of Return - “ROR”</b>	Does Customer have a RoR (per section 14.1 of the General Terms)? Yes/No			No
<b>“Real Return Limit” %</b>	7%	If RoR is Yes, then # of months after the USA Start Date the RoR applies to:		N/A
<b>Closing Cost billing:</b>	Direct bill Customer or fund by adjusting Usage Rates?		Direct/Rates	Rates
<b>Support:</b>	Direct bill Customer or add to monthly USA Payment?		Direct/USA	USA
	Maximum monthly addition to USA Payment as a %:		5 %	

**Additional Terms:** The following terms shall control over any conflicting terms in the Agreement:

**Exhibit 2**  
**Service Addendum (“SA”)**

Sustainability as a **Service®**

Effective Date: \_\_\_\_\_, 2025

**Customer:**

\_\_\_\_\_

**SP Entity:**

By: \_\_\_\_\_  
By: Sustainability Partners Services LLC, its Manager

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

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

Title: \_\_\_\_\_

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

Name: Adam T. Cain

Title: President

**Exhibit 3**  
**Notice to Proceed (“NtP”)**

**This Document.** This document constitutes a Notice to Proceed (“**Notice to Proceed**” or “**NtP**”) substantially in the form provided in Exhibit 3 with respect to that certain SA Ref. # \_\_\_\_\_ of the M-USA effective \_\_\_\_\_, 202\_\_\_\_ by and between \_\_\_\_\_ (“Customer”) and Sustainability Partners LLC (“SP”). Capitalized terms used and not otherwise defined herein shall be defined in the M-USA.

Execution by the Parties of this NtP authorizes all Parties to proceed with the Unit(s) listed below being made available for Customer’s eventual execution of a related CoA in accordance with the terms of the M-USA and the above-referenced Exhibits.

Confirmed Units for this NtP to be installed at the Location are:

NtP Units				
Unit “Id #”	Quantity	Unit descriptions	Usage Rate (updated if applicable)	Estimated UL
* A *				
* B *				
* C *				
* D *				

Customer has reviewed and approved the drawings, scopes, permits, reporting, schedules, and contracts to procure, install, commission, monitor and service the above NtP Unit(s) from the involved AVs.

Customer approves acquisition of the NtP Unit(s) by the Initial Funding Entity, and the Installation may begin, subject to the terms of the SA.

SP Recommended		Approved				
<b>MMC Reserve</b>	\$	\$	Per ( <u>M</u> onth/ <u>Y</u> ear)	M	Starting month # after Install Date	1
<b>MMR Reserve</b>	\$	\$	Per ( <u>M</u> onth/ <u>Y</u> ear)	M	Starting month # after Install Date	1
<b>MMC Initial \$</b>	\$	True-Up (Month/Quarter/No)		M	Minimum \$	
<b>MMR Initial \$</b>	\$	True-Up (Month/Quarter/No)		M	Minimum \$	

**Known Closing Costs:** (those not included in SA Usage Rates being expressed as % of SA aggregate Actual Costs)

for IaaU type of SA							
taxes, fees and permits:	TBD	funding underwriting:	TBD	legal:	TBD	compliance:	TBD
asset underwriting:	TBD	formation:	TBD	origination:	TBD	Support:	TBD

for IaaS or Rights Fee type of SA							
funding underwriting	TBD	formation:	TBD	origination:	TBD	Support:	TBD

**Exhibit 3**  
**Notice to Proceed (“NtP”)**

Sustainability as a **Service®**

Effective Date: \_\_\_\_\_, 202\_\_

This Notice to Proceed is hereby issued and accepted:

**Customer:**

**SP Entity:**

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

Name: \_\_\_\_\_  
By: Sustainability Partners Services LLC, its Manager

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Name: Adam T. Cain

Title: \_\_\_\_\_

Title: President



**Exhibit 4**  
**Certificate of Acceptance (“CoA”)**

**This Document:** This document constitutes a Certificate of Acceptance (“CoA”) substantially in the form of Exhibit 4 for SA Ref: # \_\_\_\_\_ of the CEA effective \_\_\_\_\_, 202\_\_ by and between \_\_\_\_\_ (“Customer”) and Sustainability Partners LLC (“SP”). The capitalized terms referenced herein that are not defined in this CoA have meanings set forth in the CEA and its Exhibits.

CoA Units				
Unit “Id #”	Quantity	Unit descriptions	Usage Rate	Starting Usage % (0% = New)
* A *				0%
* B *				0%
* C *				0%
* D *				0%

Customer hereby accepts as complete the delivery, installation, commissioning, training, monitoring, reporting and performance of the CoA Unit(s) in all material respects.

“Install Date”: \_\_\_\_\_

Customer hereby confirms and acknowledges that the required insurance has been obtained as of the date set forth below.

Initial “Insurance Date”: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Customer:**

\_\_\_\_\_

**SP Entity:**

By: Sustainability Partners Services LLC, its Manager

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

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

Title: \_\_\_\_\_

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

Name: Adam T. Cain

Title: President

**Exhibit 5**  
**ACH Agreement**

**This Document:** This document constitutes an ACH Agreement (“ACH Agreement”) substantially in the form of Exhibit 5 of the CEA effective: \_\_\_\_\_, 202\_\_ by and between \_\_\_\_\_ (“Customer”) and Sustainability Partners LLC (“SP”). Capitalized terms used and not otherwise defined herein have meanings set forth in the CEA and its Exhibits.

This ACH Agreement shall be between Customer and the following SP Entity: \_\_\_\_\_, pursuant to the SA Ref# \_\_\_\_\_.

Customer authorizes the SP Entity to use the Automated Clearing House network for all Customer payments.

The Customer hereby authorizes the SP Entity to initiate CCD (cash concentration and disbursement) debit or credit entries upon the SP Entity request via Automated Clearing House (ACH) to or from Customer Bank Account held at the depository financial institution named below (the “Depository”). Customer authorizes the SP Entity to debit the account from time to time to satisfy any USA Payment or Disposition Fee payable to the SP Entity in accordance with the Agreement and such amount may vary but shall never exceed the amount payable.

Parties acknowledges that the origination of ACH transactions to Customer account by the SP Entity must comply with the provisions of U.S. law.

Should an ACH transaction encounter an insufficient fund or ACH cancellation the Customer agrees to a 4% transaction fee on the USA Payment per instance.

Customer agrees that the SP Entity reserves the right to request that USA Payment be made by other generally accepted funds transfer mechanisms such as Federal Wire and SP Entity reserves all rights and remedies available under the Agreement.

**ACH Instructions:**

Bank Name \_\_\_\_\_ Branch \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Bank Account Title \_\_\_\_\_

Bank Account Type: Checking \_\_\_\_ Savings \_\_\_\_

Routing # \_\_\_\_\_ Bank Account # \_\_\_\_\_

**\*\*\*\*Please include an image of a voided check with this ACH Agreement for verification\*\*\*\***

Please indicate if this is a new Agreement or a change of a previous Agreement: NEW X CHANGE \_\_\_\_ (By marking this as a change of an existing Agreement, Customer hereby gives Notice to terminate use of any previously given ACH instructions and authorize SP Entity to use the ACH instructions herein from the date of the Agreement until its termination.)

This authorization is to remain in full force and effect until SP Entity has received Notice from the Customer of its termination in such time and manner as to afford SP Entity and Depository a reasonable opportunity to act on such notification. Customer releases SP Entity and its affiliates, agents and representatives from all liability for their compliance with these instructions.

Customer understands that any fund transfer via an ACH system under this authorization is subject to the rules of the National Automated Clearing House Association applicable to the ACH system. It is not subject to the rules of the Electronic Funds Transfer Act, Regulation E issued by the Board of Governors of the Federal Reserve, or Uniform Commercial Code Article 4A.

**Exhibit 5**  
**(ACH Agreement)**

Sustainability as a **Service®**

**Customer:**

**SP Entity:**

\_\_\_\_\_  
FEIN: \_\_\_\_\_

\_\_\_\_\_  
By: Sustainability Partners Services LLC, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Adam T. Cain  
Title: President  
Date: \_\_\_\_\_