

ATTACHMENT D

[BRE Comments](#)
[July 31, 2024](#)

SOLAR POWER PURCHASE AGREEMENT (Solar Energy Procurement Agreement)

[MSWD]

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Solar Company below (the “**Effective Date**”).

Property Owner, as Purchaser		Solar Company, as Seller	
Address		Address	
Phone		Phone	
E-mail		E-mail	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar photovoltaic electricity generating system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s property described in the Site Lease (as defined below) (collectively, the “**Property**”).

Commented [DS1]: I suggest conforming this and other terms to the terms used in the Lease but have not done so in this turn to avoid non-substantive changes.

This Agreement includes the items listed below in addition to this page:

Basic Terms

- General Terms and Conditions
- Exhibit 1 Energy Rate
- Exhibit 2 System Description
- Exhibit 3 Termination Payment Schedule
- [Exhibit 4 Performance Guarantee](#)
- [Exhibit 5 Construction Specifications “Specifications”](#)
- Schedule 1 Purchaser Consents and Approvals

Formatted: Right: 0.25"

SOLAR COMPANY: _____, a
_____ company

By: _____
Name: _____
Title: _____
Date: _____

PURCHASER: _____, a
_____ public agency

By: _____
Name: _____
Title: _____
Date: _____

BASIC TERMS

1. **Initial Term:** 25 years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to [] five-year periods following the end of Initial Term.
3. **Environmental Attributes:** ~~Owned by Solar Company~~ See General Terms and Conditions Section 5.
4. **Energy Rate for the Initial Term:** See **Exhibit 1.**
5. **Anticipated Installation Commencement Date:** [] months after the execution date of this Agreement.
6. **Anticipated Commercial Operation Date:** [] months after the execution date of this Agreement.
7. **Purchaser Options to Purchase System:** As set forth in **Section 13** of the General Terms and Conditions.
- 7.8. Performance Guarantee: As set forth in Exhibit 4.

GENERAL TERMS AND CONDITIONS

1. Definitions and Interpretation: Capitalized terms used in this Agreement shall have the meaning ascribed thereto in the Section of this Agreement identified in Section 20.o. below. In this Agreement: (i) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (ii) references to any agreement or contract are to that agreement or contract as amended, modified, or supplemented from time to time, except where the context otherwise requires; (iii) references to any Person includes his successors and permitted assigns; (iv) references to any law are to that law as amended from time to time (unless the context requires otherwise), and to the regulations, if any, promulgated thereunder; (v) references to any gender include a reference to all other genders; (vi) references to the singular include the plural, and vice versa; (vii) reference to any Article or Section means an Article or Section of this Agreement; (viii) reference to any Exhibit or Schedule means an Exhibit or Schedule to this Agreement, all of which are incorporated into and made a part of this Agreement as if fully set forth in the body of this Agreement; (ix) references to \$ or Dollars means United States Dollars; (x) unless expressly provided to the contrary, “hereunder”, “hereof”, “herein” and words of similar import are references to this Agreement as a whole and not any particular Section or other provision of this Agreement; (xi) “include” and “including” shall mean include or including without limiting the generality of the description preceding such term; and (xii) references to “good faith” of a Party or Parties means such Party or Parties having honesty in fact and the observance of reasonable commercial standards of fair dealing.

2. Purchase and Sale of Electricity. Upon and subject to the terms and conditions of this Agreement, Purchaser shall purchase from Solar Company, and Solar Company shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and each Additional Term (collectively the “**Term**”) up to 100% of the annual projected amount. ~~up to 100% of the annual projected amount, regardless of Purchaser’s ability to use such energy.~~ Electric energy generated by the System will be delivered to Purchaser at the Delivery Point identified on **Exhibit 2**. Purchaser shall take title to the electric energy generated by the System at the Delivery Point ~~and risk of loss will pass from Solar Company to Purchaser at the Delivery Point.~~ The Parties acknowledge that Purchaser’s electric energy requirements at the Property may exceed the output of the System, and in such event, Purchaser may purchase electric energy for the Property from other sources. Any purchase, sale or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation. Purchaser may not resell any of the electrical energy generated by the System other than (a) through its participation in a net metering, RES-BCT program or similar arrangement with the electric distribution company that provides electric services to the Property (the “**Utility**”) or (b) to the tenants of the Property, if and to the extent allowed under applicable laws.

3. Term.

a. Initial Term. This Agreement is effective as of the Effective Date. The Initial Term of this Agreement shall commence on the Commercial Operation Date and continue for the length of time specified in the Basic Terms, unless earlier terminated as provided for in this Agreement (“**Initial Term**”). The “**Commercial Operation Date**” means the date set forth in a notice from Solar Company to Purchaser that construction of the System is complete, has satisfied conditions for interconnection with the electrical network, and has commenced or is ready to commence regular commercial operation.

b. Additional Terms. If Purchaser desires to extend this Agreement, Purchaser shall deliver notice to Solar Company at least 90 days and not more than 180 days prior to the

Commented [DS2]: Purchaser should buy all of the output, even if it exceeds the projected amount.

Commented [MOU3R2]: We can add language that the District will buy more as long as the energy benefit can be assigned to one of the benefitting accounts.

Commented [DB4]: District needs to be protected from a requirement to buy an excess of kWh that it doesn’t need. An unrestricted purchase obligation is not acceptable.

Commented [DS5]: Is this applicable to the current project?

Commented [DB6R5]: i don’t believe so.

Commented [MOU7R5]: Leave in in case tenants become applicable

Formatted: Right: 0.25"

expiration of the then-effective Term, for an Additional Term as specified in the Basic Terms. The exercise of any Additional Term under this Agreement shall also extend the term of the Site Lease by the same period.

- c. Coterminous with Site Lease. Solar Company and Purchaser have entered or will enter into Land Lease and Solar Easement whereby Solar Company will lease portions of the Property (and be granted related easements) for the construction, interconnection, operation and maintenance of the System (the “Site Lease”). Notwithstanding anything contained herein, in no event will the Term of this Agreement extend beyond the term of the Site Lease and this Agreement shall automatically terminate upon the earlier of expiration or termination of the Site Lease.
- d. Excused Performance. ~~Without limitation of Section 9, i,~~ in the event and for so long as Solar Company is hindered, delayed or prevented from constructing or operating the System in whole or part or in performing any of its obligations hereunder by reason of Excusable Event, then performance of Solar Company’s obligations to the extent affected by such Excusable Event shall be excused for the applicable period; *provided that*, without limitation of the affected Party’s obligations pursuant to **Section 17**, Solar Company and Purchaser shall cooperate to resolve the issue giving rise to such Excusable Event and, to the extent that resolving the Excusable Event is within such Party’s reasonable control, use commercially reasonable efforts to mitigate or remedy the Excusable Event. The Term (and the underlying milestone dates, as applicable) shall be extended as requested by Solar Company by the duration of the Excusable Event (including, if applicable, the time required to return the System to full operability and performance after the resolution of the Excusable Event). If the Excusable Event delays Solar Company’s performance hereunder or under the Site Lease by more than 12 months, then either Party may terminate this Agreement by giving not less than 60 business days’ prior notice to the other Party. As used herein, “Excusable Event” means any (i) Force Majeure event, (ii) Unexpected Property Conditions, or (iii) delay obtaining any Utility approval or permit provided that Solar Company has used commercially reasonable efforts to obtain such approvals or permit.

Commented [DB8]: this section has been deleted.

4. Billing and Payment.

- a. Monthly Charges. Purchaser shall make monthly payments in arrears for energy equal to (i) the rate for the applicable Contract Year as shown in **Exhibit 1** (the “**Energy Rate**”) multiplied by (ii) the aggregate kWh of energy delivered to the Delivery Point from the System during the applicable month, as measured by the System meter, plus the amount of any Deemed Delivered Energy. The invoiced amounts shall also include taxes applicable to the sale and delivery to or consumption by Purchaser of the electricity (except as payable by Solar Company under **Section 4.c.**). “**Contract Year**” means each 12-month period beginning at 12:00 AM local time on the Commercial Operation Date, and on each subsequent annual anniversary of the Commercial Operation Date, and ending at 11:59:59 PM local time on the day immediately preceding the next annual anniversary of the Commercial Operation Date.
- b. Monthly Invoices. Solar Company shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point (or deemed delivered as provided herein) during the applicable period, (ii) the Energy Rate applicable thereto, (iii) other amounts then due and payable by Purchaser hereunder, if any, and (iv) the total invoiced amount.

Commented [DS9]: To be confirmed by BRE.

Formatted: Right: 0.25"

- c. Taxes. Purchaser shall be responsible for and pay all Taxes that are assessed, levied or otherwise charged against or relating to the Property and all improvements thereon (not including the System) as well as any applicable State, county, municipal and other local Taxes arising out of the purchase and sale of electricity hereunder. Solar Company shall be responsible for Taxes related to (i) the Site Lease and other rights of use granted to Solar Company pursuant to the Site Lease and (ii) the purchase and importation of materials and components of the System and property taxes assessed, levied, or otherwise charged against or relating to the System. For purposes of this **Section 4.c**, “**Taxes**” means any and all license, documentation, recording and registration fees, and all taxes (including income, gross receipts, sales, use, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, tariffs, imposts, duties, assessments, fees, charges, and withholdings of any nature whatsoever, whether or not presently in existence or hereafter adopted, assessed or enforced, together with all penalties, fines, sanctions, additions to tax, or interest thereon, in each case imposed by any Governmental Authority. For the avoidance of doubt, each Party shall be responsible for all Taxes payable on its revenues and income.
- d. Payment Terms. All amounts due under this Agreement shall be due and payable by Purchaser to Solar Company on or before the date that is 30 calendar days after Purchaser’s receipt of Solar Company’s invoice. Any undisputed portion of the invoice amount not paid within the 30-day period shall accrue interest at the annual rate of the Prime Rate published in the *Wall Street Journal* plus 2.5% each day that the undisputed portion of the invoice remains unpaid, but not to exceed the maximum rate permitted by applicable law. The Parties shall use good-faith efforts to resolve between them any disputes as to payments, and failing resolution, disputes shall be resolved in accordance with **Section 16**.

5. Environmental Attributes.

The delivery and sale of electricity to Purchaser under this Agreement includes the corresponding amount of Environmental Attributes As used in this Agreement:

- a. “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System, including electricity from a System storage component, and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to any Governmental Authority related to these avoided emissions, such as Green Tag Reporting Rights and renewable energy credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Incentives. Without limiting the generality of the foregoing, Environmental Attributes include voluntary or statutory carbon trading credits, renewable energy credits or

Formatted: Right: 0.25"

certificates, emissions reduction credits, investment credits, emissions allowances, green tags, and tradeable renewable credits.

- b. “Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission and any state public utility commission that regulate sales of electric power in connection with the System), or any arbitrator with authority to bind a Person at law.
- c. “Tax Incentives” means any and all (a) depreciation benefits, (b) investment tax credits, (c) production tax credits, (d) tax exemptions or abatements, and (e) similar tax credits or grants under federal, state or local law relating to the construction, ownership, existence, production or storage of energy from the System.
- d. Other Project Attributes.

The delivery and sale of electricity to Purchaser under this Agreement does not include the right to Tax Incentives or any other incentives, products or services associated with the ownership, or operation of the System (other than, for the avoidance of doubt, net metering or similar credit programs offered by the Utility), all of which, as between Solar Company and Purchaser, shall be owned by Solar Company. Purchaser shall cooperate with Solar Company in obtaining, securing and transferring the benefit of all Tax Incentives. Any reasonable out-of-pocket costs that Purchaser incurs in connection with such cooperation shall be paid or reimbursed by Solar Company within 30 days after request from Purchaser. ~~As used in this Agreement:~~

6. Obligations.

- a. ~~The solar company Solar Company is obligated to install the PV system System per the Specification included as Attachment XX Solar Company’s response to Purchaser’s electric generated by the System.~~
- a.b. Conditions to the Obligations of Both Parties. Solar Company’s obligation to install the System and sell electric energy generated by the System to Purchaser, and Purchaser’s obligation to purchase such electric energy, are conditioned on the completion or waiver (in a Party’s reasonable discretion) of the following conditions:
 - i. The Site Lease shall have been executed by the parties thereto and be in full force and effect;
 - ii. A memorandum of the Site Lease shall have been recorded in the applicable land records if Solar Company has elected to do so in its capacity as Lessee under the Site Lease;
 - iii. Purchaser and Solar Company, as applicable, shall have executed and delivered all necessary agreements with the Utility for interconnection of the System to the Property electrical system or the Utility’s electric distribution system, or both;
 - iv. Each of Purchaser and Solar Company shall have received all consents, in form and substance satisfactory to each Party, to enter into and perform its obligations

Formatted: Right: 0.25"

under this Agreement that are required from any Person, including a Party's lenders and mortgagees. As used in this Agreement, "**Person**" means any individual, partnership, joint venture, company, corporation, limited liability company, limited duration company, limited life company, association, trust or other entity or organization;

- v. Solar Company shall have obtained all zoning, land use, environmental, building and other permits from the applicable Governmental Authority required for Solar Company to install, construct, interconnect and operate the System and perform its obligations under this Agreement; and
- vi. Receipt of written confirmation, in form and substance satisfactory to Solar Company and Purchaser, from any Person (other than Purchaser) holding the fee interest in, or a mortgage, lien or other contractual encumbrance, over the Property that could result in such Person taking ownership or possession of the Property, or any portion thereof, that such Person consents to and will recognize Solar Company's rights to the System and under this Agreement and the Site Lease.

b-c. Conditions to Solar Company's Obligations. In addition, ~~to~~, Solar Company's obligation to install the System and sell electric energy generated by the System to Purchaser are conditioned on the completion to Solar Company's satisfaction (or waiver by Solar Company in its ~~sole discretion~~ reasonable discretion) of the following conditions:

- i. Solar Company shall have completed a physical inspection of the Property and any additional analysis Solar Company desires and deems necessary to confirm the suitability of the Property for the System, including, if applicable, environmental reviews, structural engineering, wetland and habitat studies, meteorological studies, and geotechnical reviews. Solar Company shall have received a copy of all legal descriptions, data and drawings, environmental studies, reports, tests, inspections, and other documents related to the Property condition in Purchaser's possession or control, within 8 weeks of notice-to-proceed;
- ii. Solar Company shall have received all approvals required to construct the System at the Property;
- iii. Solar Company shall have entered into an agreement with a contractor for the design, construction and installation of the System;
- iv. Solar Company shall have received results, satisfactory to Solar Company, of a recent Uniform Commercial Code lien search and real property search with respect to the Property;
- v. Solar Company shall have obtained confirmation from the applicable Governmental Authority that Solar Company will receive all applicable Tax Incentives;
- vi. Solar Company shall have received confirmation of the eligibility of the System for net metering from the Utility if net metering will be sought;
- vii. Solar Company shall have obtained such other information or completed such

other matters, including an analysis of Purchaser's historical electricity consumption and confirmation of economic feasibility, as are reasonably consistent with Good Solar Industry Practices prior to mobilizing for construction of the System;

viii. Purchaser shall have delivered to Solar Company proof of insurance required to be maintained by Purchaser (as Landlord) in accordance with the Site Lease; and

ix. Purchaser shall have delivered to Solar Company a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Solar Company and Purchaser, executed by all of Purchaser's lenders and mortgagees holding alien on the Property.

Commented [DB10]: please provide an example of this so that District can confirm acceptance of this obligation.

~~ix.x.~~

e-d. Conditions Satisfaction. The Parties shall work together in good faith and use commercially reasonable efforts to satisfy all conditions set forth in Section 6.a, Section 6.b, and Section 6.c in a timely manner. Solar Company shall provide written notice to Purchaser when both (i) the conditions to Solar Company's and Purchaser's obligations set forth in Section 6.b have been satisfied by the applicable Party or waived by both Parties, and (ii) Solar Company's conditions in Section 6.c have been satisfied or waived by Solar Company (the date of such notice, the "Conditions Satisfaction Date"). Solar Company shall also provide written notice to Purchaser of the date on which Solar Company expects to begin installation of the System. If any of the conditions listed above are not satisfied by the Anticipated Installation Commencement Date set forth in the Basic Terms, the Parties shall use good faith efforts to negotiate a later date for the satisfaction of the conditions, or, if the Parties are unable to negotiate such new dates within 30 days after the Anticipated Installation Commencement Date, either Party may terminate this Agreement following not less than 10 business days prior written notice to the other Party.

Commented [DB11]: Let's see what this looks like.

Commented [DB12]: what does the waiver look like?

Commented [DS13R12]: Both parties could agree to move forward with the project before receiving all consents, as an example. The waiver itself could be by email or a simple letter co-signed by both parties.

Commented [DB14]: Based on the interview, when do we expect this to be?

e. Construction Related Termination. If Solar Company determines in its sole discretion to not enter into an agreement with a contractor for the design, construction and installation of the System within the 30 days of contract signing, Solar Company shall promptly notify Purchaser thereof and either Party may terminate this Agreement with immediate effect upon written notice to the other Party and without any liability by reason of such termination and the Site Lease shall also terminate.

e-f. Commencement Related Termination. If the System has not achieved its Commercial Operation Date within 12 months after the Anticipated Commercial Operation Date (as extended by an "Excusable Event" (as defined in the Site Lease)), then either Party may terminate this Agreement with not less than 10 business days prior written notice to the other Party given on or before the date the System achieves the Commercial Operation Date, and without any liability by reason of such termination. In such event, Solar Company will remove the System in accordance with Section 5.14.4 of the Site Lease and the Site Lease shall also terminate. In addition, if Solar Company determines in its sole discretion to not enter into an agreement with a contractor for the design, construction and installation of the System, Solar Company shall promptly notify Purchaser thereof and either Party may terminate this Agreement with immediate effect upon written notice to the other Party and without any liability by reason of such termination and the Site Lease shall also terminate. In addition, if Solar Company determines in its sole discretion to not enter into an agreement with a contractor for the design, construction and installation of the System, Solar Company shall promptly notify

Commented [DB15]: design, construction, install occurring w/in-house staff, right? so this isn't relevant?

Commented [DS16R15]: A third party contractor will be used to design and install the system.

Commented [DB17R15]: ok.

Commented [MOU18]: I think that this deleted section is necessary

Commented [DB19R18]: i don't think it belongs in Commencement Related Termination. I've moved it up to its own subsection.

Formatted: Right: 0.25"

~~Purchaser thereof and either Party may terminate this Agreement with immediate effect upon written notice to the other Party and without any liability by reason of such termination and the Site Lease shall also terminate.~~

e.g. Site Lease Related Termination. In the event that the Site Lease is terminated for any reason, this Agreement shall be immediately terminated; *provided that* such termination shall not relieve Purchaser or Solar Company of any liability that arises out of the Site Lease or out of this Agreement prior to the termination hereof, including any Damages arising out of any events that caused the termination of the Site Lease or under **Section 11** with respect to termination of this Agreement.

7. Solar Company's Rights and Obligations.

- a. System Design and Finalization. Solar Company shall be responsible for the design and engineering of the System and procurement of all System components. Solar Company may either before or after the Commercial Operation Date, at its option and in accordance with the Site Lease, include battery storage in the design, installation and operation of the System. The definition of "System" hereunder shall include any such battery storage components that are installed and operated by Solar Company as part of the System.
- b. Net Metering. Solar Company shall use commercially reasonable efforts to facilitate Purchaser's inclusion in the current Utility net metering program (NEM2) which will be terminated by the Utility on April 14, 2026.
- c. System Construction; Progress Reports. Solar Company shall cause its construction contractor to construct the System in accordance with Good Solar Industry Practices. As used in this Agreement, "**Good Solar Industry Practices**" means those practices, methods, equipment, specifications and standards of safety and performance, as to which there may be more than one, and as the same may change from time to time, as are commonly applied in connection with solar photovoltaic energy systems of a type and size similar to the System and in the same geographic region as the Property that, in the exercise of reasonable judgment in light of the facts known at the time of determination, would be expected to result in an outcome consistent with applicable law, reliability, safety, economy, and efficiency.
- d. Unexpected Property Conditions. If, after Solar Company has conducted reasonable due diligence and inspection of the Property, Solar Company incurs material delays or material additional costs to modify the design, construct, install or maintain the System due to (i) unforeseen conditions at the Property (such as unforeseen shading) or as a result of the acts or omissions of Purchaser or third parties that could not have been reasonably determined from such due diligence and inspection, (ii) unforeseen groundwork at the site (including excavation/circumvention of underground obstacles), (iii) unknown Hazardous Substances at the Property, or (iv) the inaccuracy of any information provided by Purchaser and relied on by Solar Company (collectively, "Unexpected Property Conditions"), then the Parties shall first agree to the validity of the unexpected nature of the condition. If the Parties are unable to agree upon the unexpected nature of the condition, a third party, agreeable to both Parties and whose compensation shall be evenly divided between the Parties, shall render a professional opinion on the unexpected nature of the condition to be accepted by both Parties. The Parties shall then negotiate in good faith and equitable utilize the adjustment to the Energy Rate as included in Exhibit 1, schedule and other terms of this Agreement to compensate for the delays or costs incurred by Solar Company arising from such conditions (~~"Unexpected Property Conditions"~~). If the Parties are unable to agree on such an equitable adjustment within 60 business days

Formatted: Right: 0.25"

thereafter, Solar Company may terminate this Agreement and the Site Lease upon 10 business days prior written notice to Purchaser without any liability by reason of such termination other than to comply with its removal obligations under the Site Lease, if applicable. For clarity, failure to reach agreement on an adjustment to the Energy Rate, schedule and other terms of this Agreement shall not be construed as a breach of a Party's obligation to negotiate in good faith. If Solar Company does not exercise its termination right under this **Section 7.d**, this Agreement shall remain in effect on the terms set forth herein.

- e. System Status Notice. Solar Company shall notify Purchaser within 24 hours following Solar Company's discovery of (i) any material malfunction in the operation of the System, or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Solar Company shall each designate personnel and establish procedures such that each Party may contact the other in connection with the System operations, including personnel to contact 24 hours a day in case of an emergency.
- f. System Maintenance. Solar Company is obligated to maintain the System in good working order. The System shall operate as designed. Maintenance shall include panel cleaning at least once per year, complete system servicing at least once per year, IR imaging every two years, and all other PV system maintenance activities that are standard for the industry at the time in accordance with Good Solar Industry Practice.
- g. System Repair. Solar Company is obligated to repair the system System in a timely fashion. Solar Company shall attempt to identify operating issues via the System DAS within 24 hours. If the malfunction cannot be identified via the DAS, Solar Company will schedule an onsite maintenance visit within 10 working days Business Days. Any materials that are not operational upon the completion of the onsite visit will be ordered with 5 five additional working Business Days days. Repairs will be completed within 10 working days Business Days after identifying the issue or of receiving the necessary materials (whichever is later). Output at a level less than 90% of expected output for a 12-month period is considered a malfunction. Repairs for aesthetic reasons will be completed within 10 days Business Days after of Purchaser notification to Solar Company.
- h. Reporting. The Solar Company will provide annual system output performance reports and annual system O&M reports to Purchaser.
- f.i. Maintenance Outages. Purchaser acknowledges that the System may from time to time be partially or fully shut down for maintenance or repair or if required by the Utility or any Governmental Authority. To the extent feasible, Solar Company will provide Purchaser with prior notice of any scheduled System outage for maintenance or repair that is expected to be longer than one day, and will provide Purchaser with notice as soon as practicable of any unscheduled outage that continues for more than one day.
- g.j. Use of Contractors and Subcontractors. Solar Company may engage contractors and subcontractors to perform its obligations under this Agreement, provided, that such contractors and subcontractors shall be licensed in accordance with applicable law. Solar Company shall remain responsible for its obligations hereunder and the work performed by its contractors and subcontractors.
- h.k. Warranty Disclaimer. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF

Commented [DS20]: BRE to confirm scope of maintenance commitment.

Formatted: Right: 0.25"

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. THE WARRANTIES AND COVENANTS EXPRESSLY STATED IN THIS AGREEMENT SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM REGARDING DEFECTS IN WORKMANSHIP OR ANY SYSTEM EQUIPMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8. Purchaser's Additional Rights and Obligations.

- a. Cooperation. Purchaser shall cooperate with Solar Company's reasonable requests for information and access to the Property for purposes of designing and installing the System.
- b. Deemed Delivery. Except (i) in the case of a Force Majeure and (ii) where Purchaser undertakes any maintenance, repair, replacement, or other activities on the Property (including roof repair and replacement) that requires temporary disconnection of the System or any portion thereof, and such disconnection, displacement or relocation of the System continues for a period less than an aggregate of 48 daylight hours during any Contract Year, failure of the Property to accept energy produced by the System and required to be purchased by Purchaser hereunder for any reason will not excuse Purchaser from paying Solar Company the Energy Rate for electricity that, in Solar Company's reasonable estimation made as described below, could have been delivered from the System to the Delivery Point ("**Deemed Delivered Energy**"). Solar Company's estimate of lost energy production for purposes of determining the Deemed Delivered Energy will be based on historical energy delivery by the System during the same period in the prior 24 months, or, if such historical data is not available, then as modeled energy delivery by the System during the same period, corrected to the applicable meteorological conditions, and any other relevant information customarily used in such estimations, consistent with Good Solar Industry Practices. Any removal, storage and reinstallation of the System will be done under Solar Company's supervision. In addition, Purchaser shall pay or reimburse Solar Company's costs to remove, store and reinstall any portion of the System that is required to be removed in connection with Purchaser's maintenance.
- c. Net Metering and RES-BCT. If Purchaser participates in a metering program necessary for Solar Company to deliver electricity to Purchaser from the System, Purchaser and Solar Company shall execute all documentation required for such metering and interconnection, and take reasonable action to comply with the requirements for such metering and interconnection. Purchaser shall own the benefits from the applicable metering program.
- d. Data Line. Purchaser shall provide Solar Company high speed internet data access to enable Solar Company to receive and monitor data regarding the System, including energy load and output data and access to the Meter Data. Solar Company shall pay any reasonable data charges related to Solar Company's usage of such data line.
- e. Breakdown Notice. Purchaser shall notify Solar Company within 24 hours following the discovery by Purchaser of (i) any material malfunction in the operation of the System, or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Solar Company promptly when it becomes aware of (i) an interruption in the supply of electrical energy from the System, or (ii) the discovery of an emergency condition affecting the System. Solar Company shall provide and update

Commented [DB21]: confirm w/District that all sites have high-speed internet access.

Formatted: Right: 0.25"

appropriate contact information to Purchaser.

Commented [DS22]: Please clarify / add contact information.

f. **OSHA Compliance.** To the extent applicable, each of Purchaser and Solar Company will comply with all applicable health and safety laws in connection with its obligations under this Agreement.

f.g. Purchaser has the right to reject price increases that result from as a result of Solar Company's Rights and Obligations, or Solar Company's unilateral changes to the specifications.

Commented [MOU23]: This results from the sole right to add batteries.

9. **[Reserved] Change in Law.**

a. ~~Change in Law Definition. As used in this Agreement, "Change in Law" means (i) the enactment, adoption, promulgation, modification, interpretation or repeal after the Effective Date of any applicable law or regulation or regulatory treatment of Solar Company, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any Utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (i), (ii) or (iii) above, establishes additional requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other obligations of Solar~~

Formatted: Right: 0.25"

~~Company that prevents, limits, increases the cost or reduces the benefit to Solar Company of performing its obligations under this Agreement.~~

~~Remedies. If any Change in Law occurs that increases the capital, financing, operating or maintenance costs of the System, or otherwise has a material adverse effect on Solar Company or the costs of owning, operating or maintaining the System, then the Parties shall negotiate in good faith to implement equitable adjustments to the Energy Rate and any amendments to this Agreement in order to substantially maintain the respective benefits and burdens of the Parties hereunder. If the Parties are unable to agree upon such amendments following 60 days of negotiation, then Solar Company may terminate this Agreement and the Site Lease without any cost or liability other than its removal obligations in accordance with the Site Lease. For clarity, failure to reach agreement on an adjustment to the Energy Rate or an amendment to this Agreement shall not be construed as a breach of a Party's obligation to negotiate in good faith. If Solar Company does not exercise its termination right under this Section 9.b, this Agreement shall remain in effect on the terms set forth herein without change in the Energy Rate. If such Change in Law makes material performance hereunder by either Party a material violation of any applicable law or regulation so as to effect a frustration of purpose of this Agreement, then the affected Party may terminate this Agreement and the Site Lease upon 10 days prior written notice to the other Party. In addition, if a Change in Law results in a Party being subject to regulation as a public utility, the Party subject to regulation as a public utility may terminate this Agreement upon 10 days advance written notice to the other Party and (i) if the terminating Party is Purchaser, Purchaser shall pay the applicable Termination Payment and be responsible for the costs of removal of the System, and (ii) if the terminating Party is Solar Company, Solar Company shall be responsible for the costs of removal of the System.~~

Commented [MOU24]: This is covered by Force Majeure

10. Metering, Measurement and Ownership of Data.

- a. Metering and Measurement. Solar Company shall install one or more revenue grade bidirectional meters (the "**Solar Company Meter**"), as Solar Company deems appropriate, at or immediately before the Delivery Point to measure the net delivered output of the System. The Solar Company Meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Solar Company shall maintain the Solar Company Meter in accordance with industry standards. If the Solar Company Meter's operation is interrupted at any time for any reason, or is found to be inaccurate and in need of repair or replacement, Purchaser will be charged for electricity delivered during such interruption or inaccuracy calculated in a manner consistent with the calculation of Deemed Delivered Energy in **Section 8.b**.
- b. Ownership of Meter Data. Solar Company shall own all data generated by the Solar Company Meter (the "**Meter Data**"). At Purchaser's request, Solar Company shall provide Purchaser access to the Meter Data in 15-minute increments. Each of Solar Company and Purchaser may copy, reproduce, alter, aggregate, use, distribute and make available to third parties Meter Data for its respective compliance and business purposes, including for research and development, data analysis, marketing, and to improve, develop and offer new products and services.

11. Default and Remedies: Termination.

- a. Default. As to the applicable Party, the occurrence of any of the circumstances listed below shall be deemed an event of default by such Party (such Party, "**Defaulting Party**") and each event of default shall be an "**Event of Default**":

Formatted: Right: 0.25"

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within 30 business days following receipt of written notice from the other Party (the “Non- Defaulting Party”) of such failure to pay;
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within 30 days following receipt of written notice from the Non-Defaulting Party demanding such cure; *provided, that* such 30 day cure period shall be extended (but not beyond an aggregate of 90 days) if and to the extent reasonably necessary to cure such obligation, and if (A) the Party failing to perform has initiated and is and continues to diligently pursue such cure and (B) no material adverse effect on the Non- Defaulting Party resulting from such failure to perform has occurred or is reasonably likely to occur during such period, including in connection with the financing of the System;
 - iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within 30 days following receipt of written notice from the Non- Defaulting Party demanding such cure;
 - iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect;
 - v. with respect to Purchaser, ~~an “Event of Default” a Breach~~ (as defined in the Site Lease) by Landlord has occurred and is continuing or with respect to Solar Company, ~~an “Event of Default” a Breach~~ by Solar Company as defined in the Site Lease has occurred and is continuing;
 - vi. Purchaser fails to provide Solar Company, or its permitted assignees, with access to, on, over, under and across the Property pursuant to the Site Lease for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; or (b) performing all of Solar Company’s other obligations under this Agreement and exercising any rights under the Site Lease.
 - vii. ~~Solar Company fails to meet NEM2 requirements~~
 - viii. ~~Solar Company is purchased without providing legal transfer of its operations and maintenance obligations~~ Solar Company assigns this Agreement other than in accordance with Section 19.1.
- b. Remedies.
- i. Remedies for Defaults. Without limitation of the foregoing, during the continuation of an Event of Default that has had or is reasonably likely to have a material adverse effect on the Non-Defaulting Party, the Non- Defaulting Party may terminate this Agreement or suspend performance of its obligations under this Agreement with not less than five business days prior written notice to the Defaulting Party. Subject to the limitations herein, the Parties may exercise their rights and remedies under this Agreement and at law or in equity in connection

Commented [DS25]: 30 days is lengthy for late payments.

Commented [DB26]: need to draft language for these or similar sections

Commented [DS27R26]: Additional default provisions to be discussed by the parties.

Formatted: Right: 0.25"

with any breach of this Agreement or Event of Default, whether or not this Agreement is terminated by reason of such Event of Default. In addition:

- (1) If Purchaser is the Defaulting Party, then Solar Company may suspend delivery of electricity from the System. Solar Company acknowledges and agrees that Solar Company and its Representatives will not take any action hereunder causing the Utility to be unable to provide electricity to Purchaser, the Property or the Building.
- (2) [The provisions of the Performance Guarantee attached as Exhibit 4 are Purchaser's sole and exclusive remedy for an Event of Default described in Section 11.a.vii, viii and ix.]

ii. Solar Company Additional Remedies Upon Termination for Purchaser Default.
In addition to the remedies set forth in **Section 11.b.ii**, if Purchaser is the Defaulting Party and Solar Company terminates this Agreement as provided herein, then:

- A. if the termination date is prior to the Commercial Operation Date, Purchaser shall pay to Solar Company all of Solar Company's out of pocket costs and expenses reasonably incurred and accrued through the date of termination, including Solar Company's costs of due diligence and development costs and any procurement and installation work on the System incurred through the date of termination; and
- B. if the termination date is on or after the Commercial Operation Date, Solar Company may, in its sole discretion, demand that Purchaser pay an amount equal to the greater of Fair Market Value and the applicable termination payment to Solar Company as shown in **Exhibit 3** (the "**Termination Payment**") for the applicable Contract Year, such payment (A) to be made to Solar Company within 30 business days after Solar Company's demand (it being understood that title and ownership to the System shall remain with Solar Company or its permitted assignee) and (B) once made, but without limitation of Purchaser's obligations under **Section 14** in respect of the claims of third parties, and notwithstanding **Section 11.b.i**, shall be Solar Company's exclusive remedy for such Event of Default.

iii. [Purchaser Additional Remedies Upon Termination for Solar Company Default. In addition to the remedies set forth in Section 11.b.ii, if Solar Company is the Defaulting Party and Purchaser terminates this Agreement as provided herein, then:

- A. if the termination date is prior to the Commercial Operation Date, Solar Company shall pay to Purchaser the value of the projected increased cost to Purchaser of being subject to the NBT Utility tariff for the Deemed energy production for the term of the PPA; and
- B. if the termination date is on or after the Commercial Operation Date, Solar Company shall pay to Purchaser the value of the projected increased cost to Purchaser of being subject to the NBT Utility tariff for the Deemed energy production for the term of the PPA.]

The Parties acknowledge that actual damages in the event this Agreement terminates

Commented [DS28]: Appropriate remedies for termination due to Solar default to be discussed by the parties. Proposal is not market.

Formatted: Right: 0.25"

prior to the expiration of the Term as the result of an Event of Default would be difficult to ascertain, and payment of the amount contemplated in **Section 11.b(ii)** is a reasonable approximation of the damages suffered by the other Party as a result of early termination of this Agreement and is not a penalty. Payment hereunder shall not be less than zero. Each Party acknowledges and agrees that the other Party and its Representatives will not take any action hereunder causing the Utility to be unable to provide electricity to Purchaser.

c. Successor Owner.

ii.i. If Purchaser plans to sell or otherwise transfer ownership of its interest in the Property or this Agreement to any Person (the “**Successor Owner**”), then Purchaser shall give Solar Company not less than 30 days prior notice of the date of such transfer, and on the date of such transfer, this Agreement will be assigned to the Successor Owner and (i) the Successor Owner must accept assignment of this Agreement and assume the obligations of Purchaser in a writing that is enforceable by Solar Company, and (ii) the Site Lease will be duly assigned to the Successor Owner or its Affiliate simultaneously with this Agreement with such assignment in written recordable form that Solar Company is duly authorized by the Successor Owner to record in the applicable land records. From and after the effective date of such assignments, Purchaser shall have no further liability under this Agreement, other than as to matters arising or accruing prior to the effective date of such assignments.

iii.ii. If Solar Company plans to sell or otherwise transfer ownership of its interest in the Project or this Agreement to any Person, then Solar Company shall give Purchaser not less than 30 business days prior notice of the date of such transfer, and on the date of such transfer, this Agreement will be assigned to the successor owner and (i) the successor owner must accept assignment of this Agreement and assume the obligations of Solar Company in a writing that is enforceable by Purchaser, and (ii) the Site Lease will be duly assigned to the successor owner or its Affiliate simultaneously with this Agreement with such assignment in written recordable form that the Successor Owner is duly authorized to record in the applicable land records. From and after the effective date of such assignments, Solar Company shall have no further liability under this Agreement, other than as to matters arising or accruing prior to the effective date of such assignments.

12. Representations and Warranties.

a. General Representations and Warranties. Each Party represents and warrants to the other Party the following as of the Effective Date and the Conditions Satisfaction Date:

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

- ii. Approvals; Compliance with Laws. Except as are to be obtained in connection with performance of this Agreement, such Party has obtained all permits, licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement, and such Party is in compliance with all laws (including Environmental Laws) that relate to this Agreement in all material respects.

- b. Purchaser's Additional Representations and Warranties. Purchaser represents and warrants to Solar Company the following as of the Effective Date and the Conditions Satisfaction Date:
 - i. Consents and Approvals; Ownership of Property and Other Agreements. ~~Except as set forth in Schedule 1:~~ (A) Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under or requires any consent or approval under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Property is bound; (B) there are no leases or other third party rights to the Property that would preclude Solar Company from installing and operating the System and selling electricity produced by the System to Purchaser; and (C) there are no title-related or zoning restrictions on installation or use of solar panels on the Property to generate electricity.
 - ii. Accuracy of Information. The information prepared by Purchaser and delivered to Solar Company in connection with the Property, Purchaser's planned use of the Property, and Purchaser's estimated electricity requirements, is accurate in all material respects; *provided that* any portion of such information that is based on information provided to Purchaser from third parties is, to Purchaser's actual knowledge, accurate in all material respects.
 - iii. Purchaser Status. Purchaser is not in the business of being a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - iv. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.
 - v. Hazardous Substances. Except as has been disclosed to Solar Company in writing, to Purchaser's knowledge, there are no Hazardous Substances that exist on or under the Property that would impede installation or operation of the System.

- c. Solar Company's Additional Representations and Warranties. Solar Company represents and warrants to Purchaser the following as of the Effective Date and the Conditions Satisfaction Date:
 - i. Other Agreements. Neither the execution and delivery of this Agreement by Solar Company nor the performance by Solar Company of any of its obligations under this Agreement conflicts with or will result in a breach or default under (or requires any consent or approval under) any agreement or obligation to which Solar Company is a party or by which Solar Company is bound, other than, in the

Commented [DS29]: Not needed here.

Formatted: Right: 0.25"

case of required consents, (a) such consents as have been obtained and are in full force and effect and good standing and (b) consents and approvals that are to be obtained in connection with performance of this Agreement.

13. Ownership: Option to Purchase.

- a. Option to Purchase. At the end of the 6th Contract Year, 12th Contract Year, and at the end of the Initial Term and the end of each Additional Term (each such date a “**Purchase Option Date**”), so long as Purchaser is not in default under this Agreement or the Site Lease, Purchaser may purchase the System from Solar Company (i) at the end of the 6th Contract Year and 12th Contract Year, for a purchase price equal to the greater of the Termination Payment as of such Purchase Option Date and the Fair Market Value of the System as of such Purchase Option Date, and (ii) at the end of the Initial Term and any Additional Term, for Fair Market Value of the System as of such Purchase Option Date. Purchaser shall ~~irrevocably~~ notify Solar Company of its intent to purchase the System at least 90 business days and not more than 180 business days prior to the Purchase Option Date, and the purchase shall be completed on or before the Purchase Option Date. As of such purchase, (i) Solar Company shall transfer to Purchaser or its Affiliate good and marketable title to the System and shall assign to Purchaser or such Affiliate any third party warranties in respect of the System then in effect, (ii) this Agreement shall thereupon terminate, (iii) the Site Lease shall thereupon terminate, and (iv) Purchaser shall assume responsibility for the System. Following the purchase, Solar Company shall have no further liabilities or obligations hereunder other than obligations arising prior to such termination.
- b. Determination of Fair Market Value. As used in this Agreement, “**Fair Market Value**” means the amount that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, (i) the age, condition and performance of the System, *provided that* equipment shall be valued on an installed basis, shall not be valued as scrap, and shall be valued without the costs of removal from a current location, and (ii) the remaining useful life of the System, including the expected price of electricity [and Environmental Attributes] and Tax Incentives. If the Parties are unable to agree on the Fair Market Value of the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System using the formulation set forth herein, and the independent appraiser shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

14. Indemnification.

- a. General. Each Party (the “**Indemnitor**”) shall defend, indemnify and hold harmless the other Party and the other Party’s Affiliates and its and their directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnitees**”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Damages**”) resulting from any third party claim (each, a “**Claim**”) in connection with the breach of any representation or warranty made herein, from injury to or death of persons, or damage to or loss of property to the extent caused by or arising out of the negligence of willful misconduct of the Indemnitor (or its contractors, agents or employees); *provided, that*

Formatted: Right: 0.25"

nothing herein shall require the Indemnitor to indemnify the Indemnitee for any Damages to the extent caused by or arising out of the negligence, willful misconduct or fraud by the Indemnitee. This **Section 14.a** shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by **Section 14.c**. As used in this Agreement, (1) “**Affiliate**” means, as to a Party, any other entity that, directly or indirectly, owns or Controls, is owned or Controlled by or is under common ownership or Control with such entity; *provided, however,* for purposes of this Agreement, in no event will Solar Company and Purchaser be considered Affiliates; and (2) “**Control**” means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

- b. **Notice and Participation in Third Party Claims.** Each Party shall promptly notify the other Party of any Claim or threatened Claim, demand or proceeding in respect of which it is or may be entitled to indemnification under this **Section 14**. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Claim or threatened Claim, demand or proceeding. The Indemnitor shall be entitled to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, provided (i) it gives prompt notice of its intention to do so to the Indemnitee and reimburses the Indemnitee for the reasonable costs and expenses incurred by the Indemnitee prior to the assumption by the Indemnitor of such defense, and (ii) such counsel is reasonably acceptable to the Indemnitee. Unless and until the Indemnitor acknowledges in writing its obligation to indemnify the Indemnitee and assumes control of the defense of a Claim in accordance with this **Section 14.b**, the Indemnitee shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any Claim by any third party alleged or asserted against the Indemnitee in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the obligations of the Indemnitor under this **Section 14**. Following the acknowledgement of the indemnification and the assumption of the defense by the Indemnitor, the Indemnitee shall have the right to employ its own counsel and such counsel may participate in such Claim, but the fees and expenses of such counsel shall be at the expense of such Indemnitee, when and as incurred, unless (i) the employment of counsel by such Indemnitee has been authorized in writing by the Indemnitor, (ii) the Indemnitee shall have reasonably concluded that there is an actual conflict of interest between the Indemnitor and the Indemnitee in the conduct of the defense of such action, or (iii) the Indemnitee shall have reasonably concluded on the advice of qualified counsel and specifically notified the Indemnitor either that there may be specific defenses available to it that are different from or additional to those available to the Indemnitor or that such Claim involves or could have a material adverse effect on the Indemnitee beyond the scope of this Agreement.
- c. **Environmental Indemnification.** Solar Company shall indemnify, defend and hold harmless all of Purchaser’s Indemnitees from and against all Claims and Damages arising out of or relating to the existence at, on, above or below the Property of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Solar Company or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless Solar Company’s Indemnitees from and against all Claims and Damages arising out of or relating to the existence at, on, above, below or near the Property of any Hazardous Substance, except to the extent of Hazardous Substance (1) deposited, spilled or otherwise caused by Solar Company or any of its contractors or agents, or (2) unknown to Purchaser prior to the Effective Date.

- d. Notification. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Property generally or any deposit, spill or release of any Hazardous Substance. As used in this Agreement:
- i. **“Hazardous Substance”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any Environmental Laws, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.
 - ii. **“Environmental Law”** means any applicable federal, state, municipal or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision implementing any of the foregoing by any Governmental Authority relating to (A) the protection of the air, water, land or natural resources or (B) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Substances.

15. Limitations of Liability.

- a. No Consequential Damages. EXCEPT AS AND TO THE EXTENT SPECIFICALLY PROVIDED FOR IN THE CALCULATION OF THE TERMINATION PAYMENT OR AS PROVIDED IN SECTION 11.b., NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, (a) ACTUAL DAMAGES, COMPENSATORY DAMAGES AND DIRECT DAMAGES, AND (b) THE RECAPTURE OF ANY TAX BENEFITS OR TAX CREDIT AND ANY RELATED PENALTIES AND INTEREST, IN EACH CASE, SHALL NOT CONSTITUTE CONSEQUENTIAL OR OTHER PROHIBITED DAMAGES FOR PURPOSES OF THIS THIS AGREEMENT; *PROVIDED THAT* FOR THE AVOIDANCE OF DOUBT, SOLAR COMPANY ACKNOWLEDGES THAT PAYMENT SPECIFIED BY SECTION 112+.b.ii.B SHALL BE DEEMED TO INCLUDE SATISFACTION OF ANY DAMAGES RESULTING FROM THE RECAPTURE OF TAX BENEFITS AND TAX CREDITS.
- b. No Party shall be liable for any damages hereunder that are duplicative of any other damages hereunder or under the Site Lease by reason of the facts and loss giving rise to such damages constituting more than one breach of this Agreement or constituting a breach of both this Agreement and the Site Lease.
- c. Actual Damages. Other than with respect to claims of third parties indemnified by Solar Company hereunder, Solar Company’s aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed an amount equal to ~~the greater of or of (i)~~ the proceeds from any insurance applicable to such damages under insurance coverage that Solar Company is required to maintain in effect hereunder ~~and (ii) \$100,000~~ (such amount, the “Solar

Commented [DB30]: what’s the basis for this value?

Formatted: Right: 0.25"

Company Liability Cap”). The provisions of this **Section 15.c** shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Solar Company must be brought within one year after the cause of action accrues and is known to Purchaser.

- d. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON LIABILITY SET FORTH IN **SECTION 15.a** AND **15.c** SHALL NOT APPLY WITH RESPECT TO (i) CLAIMS MADE BY, DAMAGES INCURRED BY, OR AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO AN INDEMNITY GIVEN HEREUNDER, (ii) AMOUNTS THAT ARE COVERED BY INSURANCE PROCEEDS RECEIVED OR RECEIVABLE FROM A PARTY’S INSURANCE, IT BEING THE PARTIES’ SPECIFIC INTENT THAT THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS **SECTION 15** WILL NOT RELIEVE THE INSURERS’ OBLIGATIONS FOR SUCH INSURED RISKS, OR (iii) CLAIMS ARISING OUT OF A PARTY’S OR ANY ITS INDEMNITEE’S WILLFUL MISCONDUCT OR FRAUD.

16. Dispute Resolution. The Parties shall attempt to first resolve informally any dispute arising from or relating to this Agreement. If after a good faith attempt at such informal dispute resolution either Party believes that such attempts will not be successful, such Party may initiate binding arbitration in either Santa Rosa or San Francisco, California. The arbitration shall be administered by JAMS or other agreed upon recognized arbitration service in accordance with its Comprehensive Arbitration Rules and Procedures using a panel of three arbitrators, and judgment on any award may be entered in any court of competent jurisdiction. Each Party shall select one arbitrator. The arbitrators selected by the parties will select a third arbitrator who will be the chair. If the Parties agree, a mediator may be engaged prior to arbitration. The prevailing Party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys’ fees and costs, provided that the cost of mediation shall be borne equally by the Parties notwithstanding the outcome of any arbitration or judicial proceeding. Purchaser hereby grants a limited waiver of sovereign immunity from suit to compel or enforce Landlord’s compliance with the terms of this Lease.

Commented [DS31]: Conformed to the dispute resolution provision of the Site Lease.

Commented [MOU32]: This needs to be closer to the District

Commented [MOU33]: District Legal needs to comment on whether this paragraph is acceptable.

- a. Resolution by Parties. If a Dispute arises between Solar Company and Purchaser in connection with this Agreement, then, the Parties shall attempt to resolve such Dispute through senior management negotiations. Either Party may, by notice to the other Party, request a meeting to initiate negotiations to be held at a mutually agreed time and place (either in person or by phone) within ten business days after the other Party’s receipt of such request. If the Dispute has not been resolved by senior management within 30 days after commencement of such senior management negotiations, either Party may pursue available remedies under the terms of this Agreement. The Parties shall attempt to resolve all Disputes promptly, equitably and in good faith. The costs and fees associated with a meet and confer or mediation shall be split equally between the Parties.

- b. Venue. THE VENUE FOR ANY ACTION BROUGHT UNDER THIS AGREEMENT SHALL BE THE UNITED STATES FEDERAL COURTS LOCATED WITHIN FULTON RIVERSIDE COUNTY, GEORGIA CALIFORNIA (OR, IF JURISDICTION IS NOT AVAILABLE IN THE UNITED STATES FEDERAL COURTS, THE STATE COURTS LOCATED IN ATLANTA, GEORGIA). EACH PARTY CONSENTS TO PERSONAL JURISDICTION IN ANY ACTION BROUGHT IN THE UNITED STATES FEDERAL COURTS LOCATED WITHIN RIVERSIDE COUNTY, CALIFORNIA, FULTON COUNTY, GEORGIA (OR, IF JURISDICTION IS NOT AVAILABLE IN THE UNITED STATES FEDERAL COURTS, TO PERSONAL JURISDICTION IN ANY ACTION, BROUGHT IN THE STATE COURTS LOCATED IN ATLANTA, GEORGIA CALIFORNIA) WITH RESPECT TO ANY DISPUTE, CLAIM OR

Formatted: Right: 0.25"

~~CONTROVERSY ARISING OUT OF OR IN RELATION TO OR IN CONNECTION WITH THIS AGREEMENT, AND EACH OF THE PARTIES AGREES THAT ANY ACTION INSTITUTED BY IT AGAINST THE OTHER WITH RESPECT TO ANY SUCH DISPUTE, CONTROVERSY OR CLAIM. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANOTHER IN ANY MATTER WHATSOEVER ARISING OUT OF OR IN RELATION TO OR IN CONNECTION WITH THIS AGREEMENT. IN ADDITION, EACH PARTY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION IN THE RESPECTIVE JURISDICTIONS REFERENCED IN THIS SECTION. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY DISPUTE THAT RELATES TO BOTH THIS AGREEMENT AND THE SITE LEASE MAY BE COMBINED INTO ONE ACTION.~~

~~e. Prevailing Party. Should any suit or action be commenced in connection with any Dispute in question between the Parties arising out of or related to this Agreement, to obtain a construction of or to enforce any provision of this Agreement, to rescind this Agreement, or to enforce or collect any award obtained during arbitration or any judgment or decree of any court relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' and expert witnesses' fees and other costs, disbursements and expenses incurred in the arbitration, at trial, on review for appeal and on appeal, as well as on review for reconsideration and on reconsideration at any stage in the process, as the court may adjudge reasonable.~~

~~d. Judicial Reference.~~

~~(a) Any and all disputes, claims and controversies arising out of, connected with or relating to this Agreement or the transactions contemplated hereby (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms of this Agreement in lieu of the jury trial waivers otherwise provided herein or therein. Disputes may include tort claims, counterclaims, claims brought as class actions, claims arising from documents executed in the future, disputes as to whether a matter is subject to judicial reference, or claims concerning any aspect of the past, present or future relationships arising out of or connected with Agreement.~~

~~(b) Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure ("CCCP") §§ 638 et seq.~~

~~(c) The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least 10 years' experience practicing commercial law selected by mutual agreement of the Parties. The Parties shall not seek to appoint a referee that may be disqualified pursuant to CCCP § 641 or 641.2 without the prior written consent of both Parties.~~

~~(d) If the Parties are unable to agree upon a referee within ten days after one Party serves a written notice of intent for judicial reference upon the other Parties, then the referee will be selected by the court in accordance with CCCP § 640(b). If the referee is selected by the court in accordance with CCCP § 640(b), each Party will have one preemptory challenge pursuant to CCCP § 170.6.~~

Formatted: Underline

Commented [MOU34]: I don't know what that means.

Commented [MOU35]: Who is the referee? Who Assigns them? Are parties obligated to use a referee? Does this eliminate the ability to sue?

Formatted: Right: 0.25"

- (e) ~~The referee will be appointed to sit as a temporary judge, with all of the powers for a temporary judge, as authorized by law, and upon selection should take and subscribe to the oath of office as provided for in Rule 2.931 of the California Rules of the Court (or any subsequently enacted Rule). Therefeere shall render a written statement of decision and shall conduct the proceedings in accordance with the CCCP, the Rules of Court, and the California Evidence Code, except as otherwise specifically agreed by the Parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with CCCP §§ 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court. The Parties expressly reserve their right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, will also be a reference proceeding hereunder.~~
- (f) ~~If a Dispute includes multiple claims, some of which are found not subject to this Agreement, the Parties shall stay the proceedings of the claims not subject to this Agreement until all other claims are resolved in accordance with this Agreement. If there are Disputes by or against multiple parties, some of which are not subject to this Agreement, the Parties shall sever the Disputes subject to this Agreement and resolve them in accordance with this Agreement.~~
- (g) ~~During the pendency of any Dispute that is submitted to judicial reference in accordance with this Agreement, each of the Parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Agreement. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing Party shall be entitled to reasonable court costs and legal fees, including customary attorney fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the prevailing Party by its counsel, in such amount as is determined by the referee.~~
- (h) ~~In the event of any challenge to the legality or enforceability of this Agreement, the prevailing Party shall be entitled to recover the costs and expenses from the non-prevailing Party, including reasonable attorneys' fees, incurred by it in connection therewith.~~
- (i) ~~This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement.~~
- e. ~~THIS AGREEMENT CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CCCP § 638.~~

17. Force Majeure.

- a. As used in this Agreement, "**Force Majeure**" means any circumstance not within the control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance, despite the exercise of due diligence, cannot be or be caused to be

Commented [MOU36]: District Legal needs to comment on whether it is appropriate to delete all of this language. This entire section was part of the Template provided by the Solar Company, and has now been deleted by the Solar Company.

Formatted: Right: 0.25"

prevented or avoided by the affected Party; and (b) such circumstance is not due to the affected Party's negligence or intentional misconduct. Subject to the foregoing conditions, and except as otherwise provided herein, Force Majeure events may include events or occurrences in the nature of (i) strikes or other labor disputes other than strikes or labor disputes solely by employees of the Party claiming the Force Majeure event (or its Affiliates or contractors) or as a result of such Party's failure to comply with a collective bargaining agreement, (ii) riot or civil unrest, epidemics, pandemics, earthquakes, severe weather, fire or other physical or natural disaster, (iii) work stoppages, slowdowns, labor or manpower shortages, equipment or material shortages, or (iv) actions or failures to act of any Governmental Authority ~~(including actions contemplated by Section 9)~~ including a change in applicable law that prevents, limits, increases the cost or reduces the benefit to Project Company of performing its obligations under this Agreement, in each case to the extent such failure to perform, by exercise of due diligence and foresight, could not reasonably have been avoided. ~~A Force Majeure event shall not include any inability to make any payments that are due hereunder. Events related to natural disasters shall be deemed Force Majeure as determined by evacuation warnings by the relevant Government Authority.~~

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, such Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; *provided, that:* (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all commercially reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event.
- d. If a Force Majeure event continues for a period of 12 months or more and prevents a material part of the performance by a Party hereunder, either Party shall have the right to terminate this Agreement without fault or further liability to either Party (except with respect to amounts accrued but unpaid prior to termination). In such event, Solar Company will remove the System in accordance with Section ~~5-14.4~~ of the Site Lease.

18. Assignment and Financing.

- a. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing,
 - i. Solar Company may (A) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (B) directly or indirectly assign this Agreement and the System to an Affiliate of Solar Company, (C) assign this Agreement and the System to any entity through which Solar Company is obtaining financing or capital for the System,

Commented [DB37]: We need to discuss this. It seems to refer to changes in law that affects the "cost to perform" and also result in a limit to or a failure to perform.

Commented [MOU38R37]: That might need to be a separate section as it originally was. What is the remedy if it occurs?

Formatted: Right: 0.25"

including to the counterparty to any sale-leaseback agreement executed by Solar Company with respect to the System (in which event it is understood by the Parties that Solar Company or its Affiliate will be the lessee of the System under such sale-leaseback agreement), (D) assign this Agreement and the System to any Person succeeding to all or substantially all of the assets of Solar Company, (E) assign this Agreement and the System to any assignee that (1) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System or will contract with Persons that have such experience and (2) has the financial capability to perform Solar Company's obligations hereunder, and (F) to a successor owner in accordance with Section 11.c; and

- ii. Purchaser may (A) collaterally assign its interests in this Agreement to any Financing Party, and (B) assign this Agreement, to a Successor Owner in accordance with **Section 11.c**.

In the event of any of the foregoing assignments (except for collateral assignment by Solar Company to a Financing Party), the assigning Party shall be released from all its liabilities and other obligations under this Agreement.

- b. **Financing.** The Parties acknowledge that Solar Company or Purchaser may obtain financing or other credit support from one or more Financing Parties. "**Financing Parties**" means a Person providing construction or permanent financing to Solar Company or Purchaser or, if applicable, any Person to which Solar Company has transferred the ownership interest in the System for financing purposes, including tax equity financing (or the agent of such Person) and the counterparty to any sale-leaseback agreement related to the System. In connection with such financing, (i) within five business days after receipt of a written request by a Party, the other Party shall execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Party and the Financing Parties, and (ii) the other Party shall accept performance and cure hereunder from a Financing Party as if it were the Party that is the borrower under such financing.

19. **Confidentiality.**

- a. **Confidentiality.** If either Party provides confidential information, including this Agreement, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of such Party's business ("**Confidential Information**") to the other Party or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other Party, the receiving Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance and enforcement of this Agreement, including to obtain financing for the System. Notwithstanding the above, (x) a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and Affiliates, potential lenders and owners, and potential assignees of this Agreement who have a need to know (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), and (y) Meter Data shall not be considered Confidential Information. Any recipient of Confidential Information subject to clause (x)

Formatted: Right: 0.25"

above shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 19.a, except as set forth in Section 19.b. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 19.a by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of an actual or threatened breach of this Section 19.a. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 19.a, but shall be in addition to all other remedies available at law or in equity.

- b. Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena or is necessary to enforce this Agreement, (iii) is independently developed by the receiving Party, or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

20. Miscellaneous Provisions

- a. Governing Law. This Agreement is made in and will be governed by the laws of California. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party will not be employed in the interpretation of this Agreement. In interpreting this Agreement, time is of the essence.

b. Notices.

Notices, consents or other documents required or permitted by this Agreement must be given by personal delivery, reputable overnight courier or certified U.S. mail postage prepaid and will be sent to the respective Parties as follows (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph) and will be deemed delivered upon actual delivery or refusal, if personally delivered, upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier and on the fourth business day after deposit in the U.S. mail if sent by certified mail:

To Purchaser: Mission Springs Water District
66575 Second Street
Desert Hot Springs, CA 92240

To Project Company: Staten Solar, Inc.

Formatted: Right: 0.25"

175 Northtech Parkway
San Jose, CA 95134

- b-c. Further Assurances. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- e-d. Right of Waiver. No failure of a Party to enforce any term of this Agreement will be deemed to be a waiver, and no waiver will be implied by any course of dealing or course of performance. No exercise of any right or remedy under this Agreement by Purchaser or Solar Company shall constitute a waiver of any other available right or remedy. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be in writing and limited as expressly provided therein and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future or any other performance.
- e-e. Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by either Party of its properties or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's property or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement.
- e-f. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- f-g. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- g-h. Entire Agreement, Modification, Invalidity, Counterparts. This Agreement and the Site Lease completely and exclusively state the agreement of the Parties and their Affiliates regarding their subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding their subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts, which may be delivered electronically, and each counterpart shall be considered an original and together shall comprise the same Agreement. Delivery of an executed counterpart signature page by electronic transmittal (.pdf) is as effective as executing and delivering this Agreement in the presence of the other Party to this Agreement.

Formatted: Right: 0.25"

h-i. **Negotiated Terms.** The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement. This Agreement is the result of arm's-length negotiations from equal bargaining positions.

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

j-k. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person.

l. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, **Section 7.h** (Warranty Disclaimer), **Section 11.b** (Remedies), **Section 12** (Representations and Warranties), **Section 14** (Indemnification), **Section 15** (Limitations of Liability), **Section 16** (Dispute Resolution), **Section 19** (Confidentiality), and **Section 22** (Miscellaneous).

k-m. **Insurance.**

- i. At all times during the Term, Solar Company shall maintain the following insurance: (A) Professional Liability Insurance: \$2,000,000 Each Occurrence, \$2,000,000 Aggregate; (B) Workers Compensation & Employers Liability Insurance: \$1,000,000 Each Accident, \$1,000,000 Disease – Each Employee, \$1,000,000 Disease – Policy Limit, (C) General Liability Insurance: \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, \$2,000,000 Products – Completed Operations Aggregate; (D) Automobile Liability Insurance: \$1,000,000 Combined Single Limit Each Accident; and (E) Excess Liability Insurance: \$2,000,000 Each Occurrence / \$2,000,000 General Aggregate. Solar Company's coverage may be provided as part of an enterprise insurance program.
- ii. Solar Company's insurance policies shall (i) contain a provision whereby the insurer agrees to give Purchaser at least 30 business days (10 days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to Purchaser. Solar Company shall cause its insurers providing the coverage required by this Agreement to be endorsed to waive any rights by the insurer to subrogate against Purchaser and its Affiliates, and its and their directors, officers, and employees.
- iii. Upon Purchaser's request, Solar Company shall deliver to Purchaser certificates of insurance evidencing the above required coverage. Purchaser's receipt, review or acceptance of such certificate shall in no way limit or relieve Solar Company of the duties and responsibilities to maintain insurance as set forth in this Agreement. Upon Solar Company's request, Purchaser shall deliver to Solar Company certificates of insurance evidencing the coverage required of Purchaser

Formatted: Right: 0.25"

(as Landlord) under the Site Lease. Solar Company's receipt, review or acceptance of such certificate shall in no way limit or relieve Purchaser of the duties and responsibilities to maintain insurance as set forth in the Site Lease.

- iv. Solar Company shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement by Purchaser, in which case Purchaser is responsible for payment of Solar Company's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.
- v. On its general liability, auto liability, and excess/umbrella liability insurance policies, Solar Company shall include an endorsement to the policy naming Purchaser and its successors, assigns, partners, directors, officers, employees, representatives and agents, as additional insureds for premises operations, product liability, and completed operations through the expiration of any applicable Statutes of Repose.
- vi. The Commercial General Liability, Comprehensive Motor Vehicle Liability and Excess insurance policies required in this **Section 20.m** shall state that such policies are primary and non-contributory with any insurance or self- insurance maintained by Purchaser.
- vii. Upon Solar Company's request, Purchaser shall deliver to Solar Company certificates of insurance evidencing Purchaser's general liability, auto liability, and excess/umbrella liability insurance policy coverage.

1.n. Estoppel Certificates. Purchaser and Solar Company shall each, from time to time, within five business days after receipt of the other Party's written request therefor, deliver to the requesting Party a written statement addressed to such Party and/or to any lender in connection with the Property (as to Purchaser) and Financing Party (as to Solar Company), an estoppel certificate (each an "**Estoppel Certificate**") certifying such matters (to the extent true) as the following: (i) that this Agreement (together with any amendments) is unmodified and in full force and effect; (ii) that the applicable Party has not assigned this Agreement or its interest herein; (iii) the term of this Agreement; (iv) that to such Party's knowledge, the other Party is not in breach of this Agreement and no Event of Default is continuing hereunder (or stating any breach or Event of Default known to the certifying Party); and (v) such other matters as are reasonably requested by the lender or Financing Party.

1.o. Defined Terms Reference.

Additional Term.....	Specified Terms
Affiliate.....	Section 14.a.
AML Measure.....	Section 12.a.ii.A.
CCCP.....	Section 16.d(b)
Claim.....	Section 14.a.
Commercial Operation Date.....	Section 3.a.
Conditions Satisfaction Date.....	Section 6.c.
Confidential Information.....	Section 19.a.
Contract Year.....	Section 4.a.
Control.....	Section 14.a.
Damages.....	Section 14.a.

Deemed Delivered Energy	Section 8.b.
Defaulting Party	Section 11.a.
Delivery Point	Exhibit 2
Dispute	Section 16.a.
Embargoed Territory.....	Section 12.a.ii.B.
Energy Rate.....	Section 4.a.
Environmental Attributes.....	Section 5.a.
Environmental Law.....	Section 14.d.
Estoppel Certificate	Section 20.n.
Event of Default.....	Section 11.a.
Excusable Event.....	Section 3.d.
Fair Market Value.....	Section 13.b.
Financing Parties.....	Section 18.b.
Force Majeure	Section 17.a.
Good Solar Industry Practices.....	Section 7.c.
Governmental Authority	Section 5.b.
Hazardous Substances.....	Section 14.d.
Indemnitees.....	Section 14.a.
Indemnitor.....	Section 14.a.
Initial Term	Section 3.a.
Installation Commencement Date.....	Specified Terms
Meter Data	Section 10.b.
Non-Defaulting Party.....	Section 11.a.i.
OFAC.....	Section 12.a.ii.C.
Person	Section 6.a.iv.
Property Lease	Section 12.b.v
Purchase Option Date	Section 13.a.
Purchaser.....	Preamble
REC Value	Section 8.b.
Representatives	Section 19.a.
Sanctions Measure	Section 12.a.ii.E.
Sanctioned Person.....	Section 12.a.ii.D.
Site Lease.....	Section 3.c.
Solar Company	Preamble
Solar Company Liability Cap	Section 15.c.
Solar Company Meter	Section 10.a.
Successor Owner.....	Section 11.c.
Taxes.....	Section 4.c.
Tax Incentives.....	Section 5.c.
Term.....	Section 2
Termination Payment.....	Section 11.b.ii.A.
Unexpected Property Conditions	Section 7.d.
Utility.....	Section 2.
Utility Bill	Exhibit 1
Utility Rate.....	Exhibit 1

[End of General Terms and Conditions]

Exhibit 1
Energy Rate

Year	Rate \$/kWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Scope Changes: If changes in project scope occur and such additional scope and associated costs go beyond or below those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such associated costs, and, within 30 days of receipt of notice from Provider reasonably substantiating the associated costs, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- i. Purchaser will pay or receive in refund the entire amount of such associated costs, and the kWh rate as stated in PPA Rate Table will remain unchanged.
- ii. For every \$0.01 per watt DC of such associated costs, the kWh rate in PPA Rate Table will increase or decrease by \$0.00025 per kWh for the RES BCT and \$0.0005 for the NEM2 Projects..

Formatted: Right: 0.25"

BRE Comments
July 31, 2024

Formatted: Right: 0.25"

Exhibit 2
System Description

1. **System Location (“Delivery Point”):** Building Electrical System

2. **System Size (DC kW):** []

a. Based on the final design and engineering process, Solar Company may increase or decrease the size of a System by up to 3% without Purchaser’s approval.

3. **Expected First Year Energy Production (kWh):** []

a. Subject to change based on final design and engineering.

4. **Expected Structure:** [] Ground Mount [] Roof Mount [] Canopy [] Other

5. **Expected Module(s) (subject to change at Solar Company’s reasonable discretion):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Manufacturer: Trina Solar Model: []	Quantity: []

6. **Expected Inverter(s) (subject to change at Solar Company’s reasonable discretion):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Manufacturer: CPS Model: [] kW	Quantity: []

7. **Property and System Layout:** See Attachment A

8. **Utility:** []

Formatted: Right: 0.25"

Attachment A to Exhibit 2
Property and System Layout

Exhibit 3
Termination Payment

Contract Year	Termination Value
0	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Exhibit 4
Performance Guarantee
Schedule 1
Purchaser Consents and Approvals

Formatted: Right: 0.25"

Exhibit 5
Construction Specifications

None.

Performance Guarantee Template

We are committed to maintaining the performance of the solar photovoltaic systems at levels equal to the predicted annual kWh output levels listed within the proposal. The performance guarantees shall continue until the system is maintained by us. The proposer anticipates that the System will produce the Expected Energy set forth below and guarantees that the Actual Generation will not be less than the Guaranteed Electricity Production, 90% of the Expected Energy (Guaranteed Electricity Production). To obtain the true average, a three-year generation period will be considered to calculate the performance guarantee. Solar Company will provide Purchaser with an Annual Energy Report. Based on the Report from the first year, the Solar Company will take commercially reasonable action to address shortfalls in output. Shortfall is defined as output of less than 90% of Projections over a 12-month period. Actions shall consist of repairs, adding panels, additional cleanings, etc.

The first Guarantee Output Calculation and Guarantee Payment true-up Payment will be based on a three-year average, and true-ups will occur on years 3, 6, 9, etc., every three years thereafter throughout the term of the Agreement.

To calculate the 90% threshold, the system's actual generation will be compared to the Expected Energy output after adjustment for measured metrological conditions per the Weather Adjustment/variance and as adjusted as described under "Adjustment of Expected Energy" below, in a true-up period of Thirty (36) months basis. Any excess energy produced in each true-up period cannot be applied towards covering shortfalls in kWh production in subsequent periods.

Commented [DS1]: Why can't excess energy be applied to future shortfalls?

Guaranteed Output Calculations:

- Provider shall calculate the Annual Deficit for each Guarantee Period during the Term:
Annual Deficit = ((Expected Energy x Guarantee Level) x Weather Adjustment) - Actual Generation

- Where "Weather Adjustment" means the following ratio:

$$\frac{\text{Simulated energy in a Measured Metrological Year}}{\text{Simulated energy for a standard Metrological Year}}$$

- For each Guarantee Period, the Provider shall calculate the Annual Deficit.

Commented [MOU2]: What tool will be used for these Simulations?

Guarantee Payment:

- At the end of each True-up Period of Three Years:
 - if the \sum Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the product of (i) the Annual Deficit and (ii) the blended Energy Price per kWh for each Guarantee

Period, with each product then aggregated for the Guarantee Periods comprising such True-Up Period.

- (ii) Provider shall, by invoice, promptly notify Customer of any Guarantee Payment due. A Guarantee Payment shall be payable within thirty (30) days of the date of such invoice.
- (iii) Provider shall provide Customer with a report detailing the calculations set forth in the "Guaranteed Output Calculations" and the "Guarantee Payment" Sections. This report shall contain sufficient information for the Customer to be able to determine the accuracy of the Provider's conclusion as the amount, if any, of Guarantee Payment.

Blended Energy Price: Blended rate ~~shall be calculated during "True-up" period of previous 36 months at the time of performance guarantee calculation. The Blended Rate is based on the previous 36 months of total energy cost divided by the total kWhs shown in the Table below.~~

<u>Year</u>	<u>NEM2 Sites</u>	<u>RES-BCT Site</u>
<u>1</u>	<u>\$0.0476</u>	<u>\$0.0262</u>
<u>2</u>	<u>\$0.0500</u>	<u>\$0.0275</u>
<u>3</u>	<u>\$0.0525</u>	<u>\$0.0289</u>
<u>4</u>	<u>\$0.0551</u>	<u>\$0.0304</u>
<u>5</u>	<u>\$0.0579</u>	<u>\$0.0319</u>
<u>6</u>	<u>\$0.0608</u>	<u>\$0.0335</u>
<u>7</u>	<u>\$0.0638</u>	<u>\$0.0351</u>
<u>8</u>	<u>\$0.0670</u>	<u>\$0.0369</u>
<u>9</u>	<u>\$0.0703</u>	<u>\$0.0387</u>
<u>10</u>	<u>\$0.0738</u>	<u>\$0.0407</u>
<u>11</u>	<u>\$0.0775</u>	<u>\$0.0427</u>
<u>12</u>	<u>\$0.0814</u>	<u>\$0.0449</u>
<u>13</u>	<u>\$0.0855</u>	<u>\$0.0471</u>
<u>14</u>	<u>\$0.0898</u>	<u>\$0.0495</u>
<u>15</u>	<u>\$0.0942</u>	<u>\$0.0519</u>
<u>16</u>	<u>\$0.0990</u>	<u>\$0.0545</u>
<u>17</u>	<u>\$0.1039</u>	<u>\$0.0573</u>
<u>18</u>	<u>\$0.1091</u>	<u>\$0.0601</u>
<u>19</u>	<u>\$0.1146</u>	<u>\$0.0631</u>
<u>20</u>	<u>\$0.1203</u>	<u>\$0.0663</u>
<u>21</u>	<u>\$0.1263</u>	<u>\$0.0696</u>
<u>22</u>	<u>\$0.1326</u>	<u>\$0.0731</u>
<u>23</u>	<u>\$0.1392</u>	<u>\$0.0767</u>

<u>24</u>	<u>\$0.1462</u>	<u>\$0.0806</u>
<u>25</u>	<u>\$0.1535</u>	<u>\$0.0846</u>

Actual Generation Measurement:

The process for measuring Actual Generation for each Guarantee Period shall be:

- **Initial Output Data Collection.** During the Term, the Provider will collect energy output data using its Data Acquisition System. For each Guarantee Period, the Provider will sum the daily kWh output provided by the DAS to calculate the Actual Generation for such Guarantee Period.
- **Equipment Calibration and Replacement:** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen to thirty months. The provider shall notify the other party of the scheduled calibration date and time no less than 30 days prior and shall provide the Customer with written proof of calibration or replacement.
- **Contingency for Equipment Failure:** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially reasonable efforts to resolve the failure in a timely manner. If data is lost, Actual Generation shall be adjusted to compensate for such lost data, which shall be Provider’s sole liability, and Customer’s exclusive remedy, for any Guaranteed Output arising from any equipment failure or lost data relating to the DAS:
 - In lieu of lost meteorological data, Provider will ~~assume Standard operation~~~~utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.~~
 - In lieu of lost electricity data, ~~and Provider has adequately demonstrated that the system has generated energy,~~ Provider will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. If data from the System meter is inaccurate or missing, the Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVsyst. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Period.

Adjustment of Expected Energy:

Guaranteed output levels shall be adjusted as part of the Construction Document Phase of design. This revised number will be developed based on the final system design agreed on by both the Provider and customer. Annual guaranteed output levels shall be normalized to account for variance between actual weather conditions and those assumed in the output modeling (PVsyst) used as the basis for the Production Guarantee.

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy shall be adjusted correlatively for the period of such change:

- ~~• There is structural failure in a building supporting the System.~~
- 1. There is not a material change in solar access or irradiance causing shading such as added trees or structures.
- 2. The equipment, including any modules, inverters, racking or structure, transformers, switchgear, panelboards combiner boxes or monitoring equipment suffers a manufacturers ~~serial~~ defect to the extent more than 5% of the equipment at a singular site is out of service for a period greater than thirty (30) days and requires replacement, provided that Contractor used its best efforts to assist the Owner in its attempts to remedy the equipment with respective manufacturer;
- ~~• 3. The manufacturer of the equipment including any modules, inverters, racking or structure, transformers, switchgear, panelboards combiner boxes or monitoring equipment is not able or willing to honor its product warranty to Provider or the warranty has expired, and Owner does not remedy by replacement at its own expense, provided that Provider used its best efforts to assist the Owner in its attempts to oblige the manufacturer to comply with its warranty obligations;~~
- 4. There is any curtailment, reduction, or adjustment to the System, or failure of the System to perform, whether foreseen or unforeseen, as a result of any legislation, regulation, administrative or executive order, requisition or any other action by any (i) federal, state or local government or agency, (ii) local utility or public utilities commission; or (iii) independent system operator or regional transmission organization.
- 5. There is an event of Force Majeure; ~~or~~
- 6. There is any change in usage of our structures on any of the Sites, or buildings at or near any of the Sites, which causes additional shading, soiling, or otherwise reduced performance of the System; ~~;~~
- 7. There is a Breach of the Land Lease and Solar Easement or Solar Power Purchase Agreement by Mission Springs Water District Purchaser or its successor that affects Solar Company's ability to perform its obligations under those agreements;
- 8. There is an Excusable Event as defined in the Solar Power Purchase Agreement.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Guarantee Period	Expected Solar Energy Production (kWh)	Guaranteed Solar Energy Production (kWh)	Blended Energy Price (Total energy cost divided by the total kWh for True-up period) (\$/kWh)
1			
2			
3			

4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

BRE Comments
July 31, 2024

Formatted: Right

LAND LEASE AND SOLAR EASEMENT

Between

MISSION SPRINGS WATER DISTRICT

And

STATEN SOLAR, INC.

LAND LEASE AND SOLAR EASEMENT

This Land Lease and Solar Easement (“Lease”) is made as of August __, 2024 (the “Execution Date”) between The Mission Springs Water District, a California public entity, with its principal address at XXX (“Landlord”), and Staten Solar, Inc., a (“Project Company”) (referred individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, on or about August __, 2024, Landlord and Staten Solar, Inc., entered into an Option to Lease agreement (the “Option Agreement”) whereby Project Company retained an option to lease, at its election, certain land(s), water surface(s) and embankment(s) owned by Landlord within the Mission Springs Water District facilities (the “Option Agreement”);

Commented [DS1]: Please provide a copy for review.

WHEREAS, if and when Project Company exercises its option to lease such lands pursuant to the terms of the Option Agreement, the Parties intend that this Lease become effective;

Commented [DB2]: No Option to Lease has been used. These sections are not relevant to this transaction.

WHEREAS, it is the intent of the Parties that the Solar Power Purchase Agreement (“PPA”), attached as Exhibit A, and this Lease, be implemented such that each document be interpreted and applied to support implementation and operation of the other. Any capitalized terms defined in the PPA that are used in this Lease shall have the same meaning as provided in the PPA.

Formatted: Font: Bold

AGREEMENT

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

ARTICLE I

PREMISES

1.1 General.

a. Lease of Premises for Solar Energy Purposes. Landlord leases to Project Company, and Project Company leases from Landlord, the real property encompassing a portion of the Mission Springs Water District properties, more specifically described in Exhibit B, attached hereto (the “Premises”) for the purpose of monitoring, testing and evaluating the Premises for solar energy generation, and constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating,- solar energy generating equipment, and all necessary and proper electrical equipment- on, along and in the Premises (collectively, “Solar Facilities”), together with the appropriate rights of way. Solar Facilities includes electrical transmission and/or distribution and communications lines and related cables, wires, cables, conduit, circuit breakers and transformers, and any and all necessary and proper facilities, fixtures, and additional equipment to be operated in conjunction with- solar energy generating equipment installations and equipment in any way related to or associated with any of the foregoing for the transmission and delivery of electrical energy (“Transmission Facilities”). Project Company will have the exclusive right to use the Premises for solar energy purposes during the Term (as defined herein) of this Lease. For purposes of this Lease, “solar energy

purposes” means converting solar energy into electrical energy via solar panels, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

The general description of the Premises described in Exhibit B as incorporated into this Lease on the Execution Date may not be a precise legal description of the Premises. The Landlord and Project Company hereby acknowledge and confirm that, notwithstanding any insufficiency in the legal description attached as Exhibit B, the Parties desire to enter this Lease and to be fully and legally bound by this Lease. Moreover, the Parties acknowledge and understand that the Premises refers to Properties configured as of the Execution Date of this Lease, and which are generally depicted in Exhibit C. Therefore, Landlord and Project Company agree that (i) they are thoroughly familiar with the proposed location of the area comprising the Premises, and (ii) the legal description of the Premises may be substituted for Exhibit B pursuant to an amendment to this Lease and such legal description will become the final legal description of the Premises. The Parties acknowledge and agree that they are legally bound under this Lease pursuant to the depiction of the Premises attached as Exhibit B and both Parties will be obligated to perform hereunder based on such depiction of the Premises.

b. Access Easement. Landlord hereby grants to Project Company, for the Term, a non-exclusive easement (the “**Access Easement**”) over, across and on the Premises for ingress to and egress from the Solar Facilities by means of any existing roads and lanes, or, if no such roads exist or if it is otherwise commercially impracticable for Project Company to use existing roads, then by such route or routes as Project Company may construct from time to time as agreed to by Landlord in accordance with Section 1.1(l) herein. The Access Easement will run with and bind the Premises, and will inure to the benefit of and be binding upon Landlord and Project Company, as applicable, and their respective heirs, personal representatives, transferees, successors and assigns, and all persons claiming under them.¹

Commented [DS3]: Please provide a proposed form of Easement to be attached as Exhibit D for review.

c. Transmission Easement. Landlord hereby grants Project Company for the Term a non-exclusive easement for Transmission Facilities (“**Transmission Easement**”) on, over and across the Premises, including ingress to and egress from the Solar Facilities, on such portions of the Premises as agreed to by Landlord in accordance with Section 1.1(l) herein. The Transmission Easement will contain all of the rights and privileges for Transmission Facilities as are set forth in this Lease. The Transmission Easement will run with the Premises and inure to the benefit of and be binding upon Landlord and Project Company and their respective transferees, successors, and assigns, and all persons claiming under them. Project Company will have the right to assign or convey all or any portion of the Transmission Easement to any person on an exclusive or nonexclusive basis, subject to the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, or otherwise contract with a third party that owns, operates and/or maintains electric transmission or distribution systems relating to the construction, operation, repair and/or maintenance of the electric transmission or distribution systems, ~~provided, however, that Project Company may, without further consent of Landlord, and upon written notice to Landlord of such assignment and the assignee’s written agreement to assume Project Company’s rights and obligations under this Lease, assign its rights and obligations under this Lease to a limited liability entity to be formed by Project Company that will be the ultimate Project Company under the Lease and Seller under the PPA.~~ Project

Commented [DS4]: Addressed in the assignment provision below.

¹ The Access Easement, Transmission Easement, and Solar Easement to be granted under this Lease shall be substantially in the form attached at Exhibit D.

Company will bury all collector lines that are 138kv or less, except such lines that Project Company, in good faith, determines that it is unable to bury for technical reasons, the placement of which shall be subject to Section 1.1(l) herein.

d. Landlord's Retained Rights. Landlord will retain the right to use the portion of the Premises not occupied by Solar Facilities to the extent its use is not inconsistent with Project Company's rights under this Lease and does not interfere with the ownership or operation of the Project. Such rights shall include, without limitation, Landlord's use of the portion of the Premises occupied by Solar Facilities to (1) continue water storage operations, (2) conduct vegetative maintenance, (3) perform water monitoring and sampling as may be required under applicable law, including without limitation the requirements of Waste Discharge Requirement Order No. R1-2013-0042 as may be amended or renewed from time to time, (4) conduct inspections, and (5) conduct Premises maintenance and repair. -When on the Premises, Landlord and its representatives shall comply with Project Company's safety policies and procedures when on the Premises, and Landlord will instruct its representatives not to touch or interfere with the Project.

e. Planned Location of Solar Facilities. The initial placement of the Solar Facilities on the Premises and easement areas shall be substantially as set forth in designs and specifications provided by Project Company in its building permit application. To the extent such placement materially varies from such design and specifications, Project Company shall consult with Landlord on its site development plan prior to deploying its solar panel structure and any equipment necessary to the operating thereof, in accordance with Section 1.1(l) herein.

f. Part of a Larger Project. In the event Project Company seeks to expand the solar energy facilities with which the Premises would share transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of such facilities, Project Company may submit to Landlord proposed solar energy facilities with which the Premises is included in a defined solar energy project (the "**Larger Project**"), and seek Landlord's approval, which approval, and terms of such approval, shall be within Landlord's sole and unreviewable discretion, to include the Premises in the Larger Project.

g. Non-Interference with Landlord's Operations. Project Company acknowledges that the Premises is part of Landlord's water reclamation system and is adjacent to Landlord's -operations (together "**Landlord Operations**"), and that the Premises, Access Easement, and Transmission Easement may be concurrent with areas that are used for Landlord Operations. As such, Project Company agrees that it shall not materially interfere with Landlord Operations, and shall cause its subcontractors and agents to not materially interfere with Landlord Operations, provided that nothing in this Section 1.1(g) is intended to limit Project Company's rights to operate the Solar Facilities in accordance with this Lease.

h. Specifications. Design, implementation, and operation of the Solar Facilities by Project Company shall conform to the Specifications set forth in in the original Project Company's response to the Landlord's Request for Proposals RFP and its amendments, as may be revised in consultation with and approval of Landlord during the Procurement and Construction Period, defined herein ("Specifications"). Notwithstanding the foregoing, Project Company may at its option modify the Specifications to include battery storage components.

Commented [DS5]: "Original RFP" to be better defined.

Commented [MOU6]: This is addressed in the PPA. We do not want to duplicate language.

i. Project Company shall install an emergency shutoff switch or breaker to shut power to the Solar Facilities. Such switch or breaker shall be available for Landlord's access at all times.

j. All solar energy generation activities described herein, including the Solar Facilities, Access Easement, Transmission Easement, and Specifications shall collectively be referred to as the "~~Solar Energy Project~~";

k. Project Company shall use commercially reasonable efforts to obtain, at its sole cost and expense:

(i) any zoning, land use and building permits required to construct, install and operate the Solar Facilities; and

(ii) any agreements and approvals from the applicable Utility necessary in order to interconnect the Solar Facilities to Landlord Operations' electrical system and/or the appropriate utility's electric distribution system.

(iii) Landlord shall reasonably cooperate with Project Company's reasonable requests to assist Project Company in obtaining such agreements, permits and approvals.

l. Landlord Consent Process. With respect to any actions in which Project Company is required herein to confer with Landlord or otherwise obtain Landlord's approval, Project Company shall submit to Landlord in writing with adequate specificity the reason for the action, the details, including specifications as applicable, of the action proposed, and the timing of the proposed action. Unless there is a need for a more timely response, Landlord shall respond in writing no later than ten (10) business days after receipt of Project Company's proposal. Such response shall either approve or disapprove of the proposed action, or request additional information (which request may include a meeting with Project Company). If Landlord does not approve, or if Landlord concludes that it cannot render a determination as a result of lack of sufficient information even after meeting with Project Company or additional information is provided, Project Company may initiate dispute resolution in accordance with Section 9.5 herein.

m. OSHA Compliance. Project Company shall ensure that all state and federal Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in all material respects in its or its contractors' or subcontractors' performance under this Lease.

n. The effective date of this Lease shall be the date Project Company or the assigned Optionee under the Option to Lease Agreement exercises its option under the Option to Lease Agreement ("**Effective Date**").

1.2 Solar Easement.

a. Open Access to Sun. Landlord hereby grants and conveys to Project Company ~~a non-an~~ exclusive easement on, over and across the Premises for open and unobstructed access to the sun to develop, capture, use and convert all solar energy resources using the Solar Facilities ~~solar energy generating equipment~~ and to ensure adequate exposure of the Solar Facilities ~~solar energy generating equipment~~ to the sun. Such easement includes a

prohibition of any obstruction to the open and unobstructed access of the Solar Facilities solar energy generating equipment to the sun (together with the preceding sentence, the “**Solar Easement**”).

b. Landlord Improvements. Trees, buildings and other improvements located adjacent to the Premises as of the date of this Lease will be allowed to remain, provided that Landlord may within its discretion permit and condition removal of such trees, buildings and other improvements at Project Company’s expense upon written request of Project Company. Landlord may not place or plant any trees, buildings or improvements (an “**Improvement**”) on or adjacent to the Premises after the date of this Lease which may impede or materially interfere with the open and unobstructed access to the sun to the Solar Facilities, unless Landlord has received written approval from Project Company for any such trees, structure or improvement. Subject to the foregoing, Landlord may without Project Company approval construct an Improvement on or ancillary to the Premises if such Improvement meets all of the following requirements:

(i) Such Improvement poses no interference with any part of the Solar Facilities located on the Premises or elsewhere in the Project; and

(ii) Such Improvement is located at least five hundred (500) feet from the location of any Solar Facility (whether such Solar Facility is located on the Premises or elsewhere in the Project).

If Landlord constructs an Improvement that is determined by Project Company to violate or not be in compliance with any of the restrictions of this ~~section~~Section 1.2(b), Project Company may provide notice to Landlord that said Improvement must to be removed within thirty (30) days ~~of~~ after Landlord’s receipt of Project Company’s notice. Should Landlord fail to remove the non-complying Improvement or otherwise invokes Dispute Resolution under Section 9.5 herein within such thirty (30) day period, Project Company may cause the same to be removed and may off-set the cost of the removal against any lease payments due hereunder to Landlord.

c. No Interference. Landlord will not materially interfere with, and will not allow any other ~~party~~person or entity to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Premises.

1.3 **Continuing Nature of Obligations.**

a. Benefits are “In Gross”. The Solar Easement and all other easements and related rights granted by Landlord in this Lease to Project Company are easements “in gross”, which means, among other things, that they are interests personal to and for the benefit of Project Company, and its successors and assigns, as Landlord of the rights created by the Solar Easement and such other easements. The Access Easement, the Solar Easement and other rights granted Project Company by Landlord in this Lease are independent of any lands or estates or interest in lands, there is no other real property benefiting from the Solar Easement and, as between the Premises and other tracts of property on which Project Company may locate Solar Facilities, no tract is considered dominant or servient as to the other.

b. Burdens Run With and Against the Land. The burdens of the Solar Easement, the Access Easement and all other rights granted to Project Company in this Lease

will run with and against the Premises and will be a charge and burden on the Premises and will be binding upon and against Landlord and its successors, assigns, permittees, licensees, lessees, employees and agents. The Lease, the Access Easement and the Solar Easement will inure to the benefit of Project Company and its successors, assigns, permittees, licensees and Project lessees. Landlord and Project Company agree to execute all documents reasonably necessary to record the Solar Easement and the Access Easement in the county where the Premises are located.

ARTICLE II

LEASE TERM

2.1 **Term.** This Lease is effective as of the Effective Date. ~~The shall have a “Term” of twenty five (25) years consists of the Procurement and Construction Period and the Operating Term, unless earlier terminated in accordance with the terms of this Agreement, which Term shall be comprised of the sum of the Procurement and Construction Period and Operating Term~~ as follows:

a. **Procurement and Construction Period.** Project Company’s rights under this Lease will be in effect throughout the Procurement and Construction Period. The **“Procurement and Construction Period”** commences on the Effective Date of this Lease and expires on that date which is eighteen (18) months after the Effective Date or earlier date upon notification by Project Company that it has completed all tasks scheduled for the Procurement and Development Period. During the Development Period, the Project Company shall develop, construct, and install the Solar Facilities on the Premises.

b. **Operating Term.** The **“Operating Term”** of this Lease shall commence upon the expiration of the Procurement and Construction Period and shall continue for a period of ~~twenty-five (25) years less the time of the Procurement and Construction Period.~~ Notwithstanding the foregoing, the Operating Term may be ~~earlier terminated prior to the expiration of the Term~~ in accordance with the terms of this ~~Agreement Lease.~~

2.2 **Termination of Lease.** This Lease will terminate upon the earliest of the following events:

a. The expiration of the Term;

b. The written agreement of the Parties to terminate this Lease;

c. At the option of Project Company upon the expiration of the Procurement and Construction Period; provided that Project Company shall be required to transmit written notice of termination to Landlord not less than sixty (60) business days prior to the expiration of the Procurement and Construction Period as set forth in Section 2.1(a);

d. Landlord’s ~~termination in accordance with purchase of the Solar Facilities under Section 2.3 (Landlord Purchase); or Section 4.6 (Mosquito Abatement).~~

~~e. Termination by a Party under Section 10(b) (Force Majeure);~~

~~e.f.~~ A material Breach of this Lease by either Party and the election of ~~the~~ non-breaching party to terminate the Lease pursuant to Article IX of this Lease;

Formatted: Font: Bold

~~f.g.~~ A condemnation of all or a portion of the Premises and the election of the Project Company to terminate the Lease pursuant to Article VIII hereof;

~~g.h.~~ Pursuant to applicable law, except that if any such applicable law is amended or terminated after the Effective Date, and the effect of such amendment or termination is to extend the permissible Procurement and Construction Period to or eliminate the requirement that commercial operation or the development of the potential to produce solar energy begin within a specified time period, then this Lease will automatically be amended to incorporate such amendment or termination, as if such amendment or termination was fully incorporated herein, or;

~~h.i.~~ Termination of the ~~PPA Solar Power Purchase Agreement~~, subject to Section 4.4(a)(ii) below.

2.3 ~~Landlord Purchase [Reserved]~~.

Commented [DS7]: Purchase option is in the PPA.

~~a. — Option to Purchase. At any time after seven (7) years after the Operating Term begins, Landlord may elect to purchase the Solar Facilities and terminate this Lease upon not less than 180 days' advance written notice to Project Company. If Landlord elects to purchase the Solar Facilities prior to the expiration of the 25 year term, the purchase price shall be comprised of (i) fair market value of the Solar Facilities at the time of purchase, which valuation would be conducted in accordance with the valuation procedures set forth in Section 2.3(b) below, and (ii) value of other capital expenditures and expected lost profit, in accordance with Exhibit 7 to the PPA, for Project Company that it otherwise would have realized for the period from the date of Landlord's prospective purchase to the date that would be twenty five (25) years from commencement of the Procurement and Construction Period.~~

~~b. — Determination of Fair Market Value. Upon Landlord's exercise of the option to purchase, as set forth above, the Parties shall have thirty (30) days to negotiate in good faith and agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the fair market value of the Solar Facilities. If the Parties cannot reach agreement on an appraiser, each shall select one appraiser, and the two appraisers shall select a third appraiser to determine the fair market valuation. The appraiser agreed to by the Parties or otherwise selected by the two other appraisers, shall act reasonably and in good faith to determine the fair market value, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally~~

2.4 **Survival of Covenants.** Landlord acknowledges that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease including, but not limited to, the Access Easement and Solar Easement, and Project Company's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project and that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease will not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational. Project Company acknowledges that the covenants, conditions, rights and restrictions in favor of Landlord pursuant to this Lease will not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

ARTICLE III

PAYMENTS AND TAXES

3.1 **Payments.** Project Company will pay Landlord according to the Payment Terms set forth in Exhibit F. Notwithstanding any provision of Section 3.2 hereof, Project Company shall pay taxes due hereunder at Landlord’s option, to the extent Landlord chooses to impose such taxes as part of the Payment Terms.

Commented [DS8]: I am not sure what this means.

3.2 **Taxes, Assessments, and Utilities.**

a. Except as set forth in Section 3.1 hereof, Landlord will pay, when due, all real property taxes and assessments (together “**real property taxes**”) levied against the Premises and all personal property taxes and assessments levied against any property and improvements owned by Landlord and located on the Premises. If Landlord is responsible for paying taxes or assessments hereunder and fails to pay any such taxes or assessments when due, Project Company may, at its option, pay those taxes and assessments and any accrued interest and penalties, and either seek reimbursement from Landlord or deduct the amount of its payment from any rent or other amount otherwise due to Landlord from Project Company.

Formatted: Font: Bold

b. Project Company Taxes and Assessments. Project Company will pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the real property taxes assessed to such Premises increase solely as a result of the installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Project Company will pay or reimburse Landlord an amount equal to the increase to the extent caused by such installation no later than ten (10) days prior to the date each year on which the applicable real property taxes are due to be paid, provided that not less than thirty (30) days prior to such due date Landlord provides Project Company with copies of the applicable current and past statements of real property taxes payable for the Premises and any related information demonstrating that the installation of the Solar Facilities resulted in the increase in real estate taxes for which Landlord is requiring payment or reimbursement from Project Company.

c. Tax Contest. Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Lease as long as such contest is pursued in good faith and with due diligence and the Party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

d. Project Company Utilities. Project Company will pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Project Company on the Premises.

e. Prevailing Wages. Project Company will comply with California Labor Code Section 1720 et set, and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”) in its performance under this Lease, such requirement to further apply to Project Company’s contractors and subcontractors. Project Company shall indemnify, defend (with counsel approved by Landlord) and hold the Mission Springs Water District, the Mission Springs Water District, and their respective officers, officials, employee, agents, consultants, and contractors (collectively, “**Indemnitees**”) harmless from and against all liability, loss, cost,

Commented [DS9]: Please confirm applicability to this project.

Commented [MOU10R9]: This is required and was specified in the RFP

expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (collectively, "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation all claims that may be made by contractors, subcontractors or other third party claimants pursuant to California Labor Code Sections 1726 and 1781), or noncompliance with the Prevailing Wage Laws; provided, however, that Project Company's indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

ARTICLE IV

PROJECT COMPANY COVENANTS

Project Company covenants, represents and warrants to Landlord as follows:

4.1 **Mechanics Liens.** Project Company will keep the Premises free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed for or furnished to Project Company or, at the request of Project Company, any Solar Facility on the Premises in connection with Project Company's use of the Premises. Project Company may contest any such lien, but will post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Project Company agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within sixty (60) days of notice to Project Company of the creation of any such lien or encumbrance.

4.2 **Permits and Laws.** Project Company and its designees will at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority applicable with respect to Project Company's activities pursuant to this Lease in all material respects and will obtain all permits, licenses and orders required to conduct any and all such activities, including taking all actions necessary to obtain any permits, licenses and orders required to conduct any and all such activities to the extent such permit, licenses, or orders are required to be issued under the name of the owner of the Premises (collectively, "**Legal Requirements**"). Landlord shall provide reasonable cooperation requested by Project Company in connection with obtaining all such permits, licenses and orders. Project Company will indemnify, defend and hold harmless Landlord, in accordance with Article VI, in the event of any action, including without limitation any administrative or judicial action, with regard to Legal Requirements. Project Company will have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Project Company or in the names of both Project Company and Landlord where appropriate or required (or in the name of the Landlord where the property owner is required to be solely named), the validity or applicability to the Premises or Solar Facilities of any Legal Requirement now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity, provided that this requirement shall not apply in circumstances where Landlord or the Mission Springs Water District initiates legal proceedings against Project Company in a regulatory role. Landlord will reasonably cooperate in such contest, provided Project Company reimburses Landlord for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Landlord, will be defended by Project Company, but Project Company may not take any action or agree to any settlement, including injunctive relief, that may affect Landlord or Landlord Operations without the written consent of Landlord, which consent shall not be

unreasonably withheld, conditioned or delayed. Furthermore, Project Company will indemnify, defend and hold harmless Landlord from Project Company's failure to observe or comply during the contest with the contested Legal Requirement. Notwithstanding the foregoing, Project Company's indemnification obligations set forth in this Section 4.2 shall not apply to Claims arising from the gross negligence or willful misconduct of an Indemnitee.

4.3 Project Company's Improvements.

a. Subject to Sections 4.4(b) and (c) below, all Solar Facilities constructed, installed or placed on the Premises by Project Company pursuant to this Lease will be and remain the sole property of Project Company and Landlord will have no Landlordship or other interest in any Solar Facilities on the Premises. The Solar Facilities are and will remain personal property of the Project Company, notwithstanding any present or future common Landlordship of the Solar Facilities and the Premises.

b. Construction, installation, and placement of the Solar Facilities will be at the sole cost and expense of Project Company, and shall be consistent with the Specifications set forth at Exhibit E, and as may be revised from time to time in accordance with the terms of this Lease.

c. Throughout the Term, Project Company will, at its sole cost and expense, maintain Project Company's Solar Facilities in good condition and repair, including maintaining the Solar Facilities in a clean and orderly condition, such as taking commercially reasonable measures to ensure there is no accumulation of bird excrement or dirt on the solar panels or associated equipment. Such maintenance and repair activities, unless in an emergency situation, shall occur during Landlord's standard operator hours, provided, however, that to the extent of any maintenance, other than in emergency situations, requires shut down of the Solar Facilities, Project Company shall conduct such maintenance during off-peak or part-peak hours. Landlord shall be provided no less than twenty-four (24) hours-notice before any such activity is to occur. Any person conducting such maintenance and repair activities shall wear safety apparel in accordance with applicable law, and shall wear personal flotation devices while working on the solar panel floats. Any maintenance personnel shall sign in, sign out, and shall provide a cell phone number with Landlord's lead shift operator on site.

d. Project Company shall notify Landlord within twelve (12) hours one business day following Project Company's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Landlord and Project Company shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Project Company's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Landlord shall notify Project Company immediately upon the discovery of an emergency condition affecting the System, provided that Landlord may take any emergency action necessary to protect human health or the environment to extent immediate action is required and prior notice to Project Company is not possible.

e. All Solar Facilities constructed, installed or placed on the Premises by Project Company pursuant to this Lease may, upon reasonable advance notice to Landlord, be moved, removed, replaced, repaired or refurbished by Project Company at any time, provided that such actions by Project Company may not interfere with Landlord Operations, or if such

action may interfere with Landlord Operations require Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Project Company will pay Landlord the fair market value of caliche, gravel, or water from the Premises purchased by Project Company with the consent of Landlord.

f. Project Company will take commercially reasonable steps to avoid damaging any tile lines or irrigation systems on the Premises or easement areas. Project Company agrees to repair, replace and/or reroute underground tile lines damaged during construction or operation of the Solar Facilities. Upon reasonable notice, Landlord will be given the opportunity to inspect the repair, replacement or rerouting of tile or irrigation systems prior to being covered with topsoil.

4.4 Removal of Project Company's Improvements.

a. Project Company Will Remove Solar Facilities Upon Termination.

(i) At the end of the Term, including upon any early termination of the Lease, and subject to Landlord's option as set forth in Section 4.4(b) hereof, Project Company will remove all its Solar Facilities, within twelve (12) months ~~from~~ after the date the Term expires or the Lease terminates. Landlord grants Project Company an easement for such removal, which easement will survive for twelve (12) months after the expiration or termination of this Lease. Such easement and removal period shall be extended up to sixty (60) days in the event Landlord exercises its option under Section 4.4.(b) hereof. Upon removal of the Solar Facilities, Project Company shall restore the Premises and other areas affected by the Solar Facilities to conditions substantially as existing on the Execution Date.

(ii) In the event termination of this Lease would otherwise be effected by termination of the PPA, nothing herein shall foreclose the Parties from agreeing to continue this Lease under mutually acceptable terms, which agreement to continue the Lease would be in the sole discretion of each Party, respectively.

b. ~~Landlord's Option to Retain Solar Facilities Reserved~~. ~~At the end of the Term, including upon any termination of the Lease, Landlord shall have the option to purchase the Solar Facilities from Project Company at a price to be negotiated in good faith by the Parties. Landlord shall avail itself of such option by transmitting notice of its intent to exercise such option within thirty (30) days after the date of termination of this Lease. Thereafter, the Parties shall have sixty (60) days to enter into a long form agreement for Landlord's purchase of the Solar Facilities. If no such agreement can be reached, the Parties shall mutually agree in good faith in selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the fair market value of the Solar Facilities. If the Parties cannot reach agreement on an appraiser, each shall select one appraiser, and the two appraisers shall select a third appraiser to determine the fair market valuation. The appraiser agreed to by the Parties or otherwise selected by the two other appraisers, shall act reasonably and in good faith to determine the fair market value, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally. If Landlord does not exercise its option in accordance with the terms of this Section 4.4(b), such option shall terminate, and Project Company shall remove all its Solar Facilities as set forth in Section 4.4(a) hereof.~~

Commented [DS11]: Purchase option at year 6, 12 and at the end of the term is in the PPA.

c. Landlord's Right to Remove Solar Facilities Upon Failure by Project Company. If Project Company fails to remove any of the Solar Facilities within the required time period set for in Section 4.4(a) above, such Solar Facilities will be considered abandoned by Project Company and Landlord may remove these Solar Facilities from the Premises and dispose of them in its sole discretion without notice or liability to Project Company. In such event, if Landlord removes such Solar Facilities at Landlord's expense, Project Company will reimburse Landlord for all reasonable costs of removing those Solar Facilities, less any salvage value received by Landlord, within thirty (30) days after receipt of an invoice from Landlord.

d. Security for Removal. Commencing with the tenth (10th) year of the Operating Term, Project Company will establish security payable to Landlord to cover Project Company's obligations under Section 4.4(a) above (the "**Restoration Security**") through one of the following means to be selected by Project Company in its sole discretion: (i) by establishing an escrow account with a bank selected by Landlord, or (ii) by delivering to Landlord a letter of credit, bond, corporate guarantee from an investment grade company or equivalent security. The amount of the Restoration Security will be equal to the Net Removal Cost (as defined below), which will be determined by the Pparties in good faith; provided, however, if the Pparties cannot agree upon the Net Removal Cost within sixty (60) days, then the Net Removal Cost will be determined by an independent engineer mutually selected by the Pparties. The terms of any escrow fund, letter of credit, corporate guarantee or bond will expressly provide that Landlord will be entitled to use amounts received from the Restoration Security to remedy any damage to the Premises if Project Company fails to comply with its obligations pursuant to Section 4.4(a), after notice and opportunity to cure as provided herein. Interest earnings, if any, on any escrow fund will be the property of Project Company, and any amounts remaining in any escrow fund after Project Company has complied with its obligations pursuant to Section 4.4(a) will belong to Project Company. As used herein, the "**Net Removal Cost**" means (A) the cost of performing Project Company's obligations under Section 4.4(a) minus (B) the salvage value of the Solar Facilities located on the Premises at the time such calculation is made.

Commented [DS12]: Security requirement to be discussed by the parties.

4.5 **Hazardous Wastes**. Project Company will not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Project Company's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any Legal Requirement except in such quantities as may be required in its normal business operations and only if such use is in full compliance with all Legal Requirements. To the extent applicable, Project Company shall obtain an EPA ID Number and sign all hazardous waste manifests for any wastes associated with Project Company's operations under this Lease. Landlord is solely responsible for any any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any Legal Requirement located on the Premises that was not used, stored, disposed of or released on the Premises as a result of Project Company's operations. Project Company shall indemnify, defend and hold harmless the Indemnitees from and against all Losses (as defined below) arising out of or relating to the existence at, on, above or below the Premises of any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any Legal Requirement to the extent deposited, spilled or otherwise caused by Project Company or any of its contractors or agents. Landlord shall indemnify, defend and hold harmless the Project Company Indemnified Parties (as defined below) from and against all Losses arising out of or relating to the existence at, on, above, below or near the Premises of any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any Legal Requirement to the extent not deposited, spilled or otherwise caused by Project Company or any of its contractors or agents.

4.6 **Insurance.** ~~Project Company~~ and any contractor or subcontractor of Project Company shall not commence work under this Lease until Project Company shall have obtained all insurance required under this paragraph and such insurance shall have been approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Project Company shall not allow any contractor or subcontractor to commence work on under this Lease until all similar insurance required of the Project Company shall have been so obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Commented [DS13]: To be reviewed by BRE insurance broker.

Commented [MOU14]: MSWD Legal: Does it make sense that Insurance is reciprocal, or should this be a requirement of Project Company and not the District?

a. Each of Project Company and Landlord shall procure and maintain for the duration of the Lease all necessary insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of ~~the work hereunder by the Project Company, the Project Company's agents, representatives, employees or subcontractors~~this Lease.

b. Coverage shall be at least as broad as:

(i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(ii) Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto).

(iii) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If no employees are utilized, the CONTRACTOR shall sign a declaration as described in California Health and Safety Code Section 19825.

c. ~~Project Company~~Each Party shall maintain limits no less than:

(i) General Liability: \$14,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations and \$2,000,000 general aggregate limit. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: \$14,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation: statutory limit; Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

d. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to ~~Landlord~~the other Party. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this ~~Agreement~~Lease; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

e. Each of Project Company and Landlord will provide ~~Landlord the other Party~~ with copies of certificates of insurance evidencing this coverage upon request ~~by Landlord~~.

f. Landlord, its officers, officials, employees, agents and volunteers are to be included as additional insureds on each of the required policies held by Project Company, and Project Company, its officers, directors, managers, employees, contractors, agents, representatives and lenders are to be included as additional insureds on each of the required policies held by Landlord. Moreover, the insurance coverage required herein shall be primary insurance, each policy required shall include an endorsement providing that that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to ~~Landlord the other Party~~.

g. The Workers' Compensation endorsement under Project Company's policy shall contain a Waiver of Subrogation against Landlord and under Landlord's policy shall contain a Waiver of Subrogation against Project Company. ~~Project Company~~ Each Party shall provide to ~~Landlord the other Party~~ an endorsement from the Worker's Compensation insurer, if any, agreeing to waive all rights of subrogation against ~~Landlord the other Party~~ for injuries to employees of the Insured resulting from activities under this Lease.

h. ~~Project Company~~ Each Party shall furnish ~~Landlord the other Party~~ with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

i. Project Company shall include all contractors and subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each prior to commencement of subcontractor's work. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein.

ARTICLE V

LANDLORD COVENANTS

Landlord covenants, represents and warrants to Project Company as follows:

5.1 **Title and Authority.** Except to the extent otherwise stated in this Lease, Landlord is the sole Landlord of the Premises in fee simple and each person or entity signing the Lease on behalf of Landlord has the full and unrestricted authority to execute and deliver this Lease and to grant the leaseholds, easements and other rights granted to Project Company herein. There are no encumbrances or liens (including farm or other tenancies) against the Premises except those which are listed on Exhibit H, attached hereto (the "**Encumbrances**"). Landlord agrees to deliver any documents necessary to correct any title defects. All persons having any Landlordship interest in the Premises are signing this Lease as Landlord. When signed by Landlord, this Lease constitutes a valid and binding agreement enforceable against Landlord in accordance with its terms. Landlord expressly waives any and all existing and future statutory, common law and other liens on the Solar Facilities that Landlord may have under applicable law. To the extent that any such lien cannot be waived under applicable law, Landlord hereby subordinates such lien to all existing and future liens and security interests in favor of Project Company's creditors. There are no zoning rules or ordinances that would prohibit installation,

ownership and operation of the Project. Landlord has paid all taxes assessed on the Premises and any fixtures thereon that are due and payable.

5.2 **Cooperation to Eliminate Lien Interference.** Landlord will cooperate with Project Company to obtain non-disturbance and subordination agreements, or such other necessary agreements, in form and substance reasonably acceptable to Project Company, from any person or entity with a lien, encumbrance, mortgage, deed of trust, lease or other exception to Landlord's fee title to the Premises to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights granted to Project Company under this Lease. Any lien, encumbrance, mortgage, deed of trust, lease or other exception to Landlord's fee title to the Premises arising after the Effective Date of this Lease shall be subordinate to this Lease. Landlord will also cooperate with Project Company to obtain and maintain any permits or approvals needed for the Solar Facilities, and will provide Project Company with such further assurances and will execute any estoppel certificates, consents to assignments, non-disturbance and subordination agreements, or additional documents that may be reasonably necessary for recording purposes or requested by Project Company or any of its lenders in accordance with the terms herein.

5.3 **Quiet Enjoyment.** ~~As long as Project Company is not in Breach of this Lease,~~ Project Company will have the quiet use and enjoyment of the Premises in accordance with the terms of this Lease without any interference by Landlord or any person claiming by, through or under Landlord. Landlord and its activities on the Premises and any grant of rights Landlord makes to any other person will be only as permitted, and will not interfere with any of Project Company's rights or activities, as set forth under this Lease.

5.4 **Exclusivity.** During the Term of this Lease, Project Company will have the sole and exclusive rights to install and operate Solar Facilities on the Premises, to use the Premises for solar energy purposes and to convert all of the solar resources of the Premises. In no event during the Term will Landlord construct, build or locate or allow others to construct, build or locate any solar energy facility or similar project on the Premises.

5.5 **Hazardous Materials.** Landlord will not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Landlord's operations, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any Legal Requirement, except in such quantities as may be required in the operations Landlord is permitted to conduct on the Premises and only if such use is in full compliance with all Legal Requirements. Landlord represents and warrants to Project Company that, as of the date hereof and to the best of Landlord's knowledge, there is no "hazardous substance", "hazardous material", or "solid waste" on, in or under the Premises in violation of any Legal Requirements.

5.6 **Operation of the Solar Facilities.** Landlord acknowledges and understands that the Solar Facilities to be located on the Premises, or in connection with the Project on adjacent property may impact the view on the Premises or on adjacent Premises or otherwise cause visual effects. Landlord covenants and agrees that the Landlord will not assert that the Solar Facilities constitute a nuisance.

5.7 **Security.** Landlord shall be responsible for using commercially reasonable efforts to maintain the physical security of the Solar Facilities against known risks and risks that

should have been known by Landlord. Landlord will not conduct activities on, in or about the Premises or the Solar Facilities that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Transmission Facilities. Such efforts as are implemented as of the Effective Date with regard to security of Purchaser's Landlord's plant and reclamation facilities shall be deemed commercially reasonable efforts for purposes of this Section.

Commented [DS15]: Does this refer to facilities that are already operational near the Premises? Please clarify.

ARTICLE VI

INDEMNIFICATION

6.1 **Indemnification.** Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other party's affiliates and its and their respective officers, officials, directors, employees, representatives, volunteers, and agents and, with respect to Project Company, Lenders (as defined below) (collectively the "**Indemnified Party**") against any and all losses, damages, claims, administrative, regulatory or civil penalties or fines, expenses and liabilities, including, without limitation, reasonable attorneys' fees and costs (each a "**Loss**" and collectively "**Losses**"), to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party contemplated under or associated with this Lease, or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party with respect to this Lease or the Premises. This indemnification will not apply to Losses to the extent caused by any grossly negligent or intentional act or omission on the part of the Indemnified Party. This indemnification will survive the termination of this Lease. For the purposes of this Section 6.1, ~~the~~ Project Company's obligations hereunder shall include (1) operations or activities of any contractor or subcontractor of Project Company or its affiliates, parents, subsidiaries, agents or representatives with respect to those operations or activities contemplated under or associated with this Lease, and (2) any negligent or intentional act or omission on the part of any contractor or subcontractor of Project Company or its affiliates, parents, subsidiaries, agents or representatives with respect to this Lease or the Premises. The Indemnified Party with respect to Landlord shall include the Mission Springs Water District, and its officers, officials, directors, employees, representatives, volunteers, and agents.

Formatted: Font: Bold

Formatted: Font: Bold

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

ARTICLE VII

ASSIGNMENT; FINANCING

7.1 **Right to Encumber.** The Parties acknowledge that Project Company may obtain construction and long-term financing or other credit support from one or more Lenders. “**Lender(s)**” means person or persons providing construction or permanent financing to Project Company in connection with construction, ownership, operation and maintenance of the ~~System~~Project. To the extent Project Company seeks to finance construction, implementation, and/or operation of the ~~Solar Energy~~Project, it may contract with a lender to assume Project Company’s rights under this Lease only if all of the following conditions are fully satisfied:

a. Any Lender or other equity partner of Project Company must be reputable and have qualifications that would otherwise be necessary to contract or associate with a California municipal corporation under applicable law and consistent with good governance practices.

b. This Lease must be attached to the loan documents, and Lender must separately agree with Landlord that to the extent the lender assumes any or all of Project Company’s rights under this Lease, it agrees to be bound by the lease and fully assume all obligations of Project Company hereunder.

c. The Lender must further agree in writing with Landlord that it may not assign any of Project Company’s rights the Lender assumes under this Lease and the loan documents without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

7.2 **Lender Right to Cure Project Company Default.** Landlord agrees that any Lender will have the right to make any payment and to, and subject to the conditions of herein, do any other act or thing required to be performed by Project Company under this Lease, and any such payment, act or thing performed by Lender will be effective to prevent a Breach by Project Company and any forfeiture of any of Project Company’s rights under this Lease as if done by Project Company itself.

7.3 **Notice from Project Company to Lender in Case of Project Company Default.** During the time all or any part of Project Company’s interests in the Lease are mortgaged or assigned to any Lender, if Project Company defaults under any of its obligations and Landlord is required to give Project Company notice of the default, Project Company will be required to give Lender notice of the default within five (5) business days ~~of~~after receipt of notice from Landlord, and shall concurrently provide to Landlord a copy of the Notice sent to the Lender. If Landlord becomes entitled to terminate this Lease due to an uncured default by Project Company, Landlord will not terminate this Lease before ~~at least thirty-five (35) days from~~after the date notice of default was sent by Landlord to Project Company to provide the Lender an opportunity to cure the default and prevent termination of this Lease.

7.3.4 **Modifications in Connection with Financing.** In furtherance of Project Company’s financing arrangements, Landlord shall, within 10 business days after Project Company’s request therefor, execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Lease that may be reasonably requested by Project Company or its Lender; provided that such estoppels,

consents to assignment or amendments do not alter the fundamental economic terms of this Lease and PPA.

7.47.5 Successor Servicing. The Parties acknowledge that in connection with any construction or long term financing or other credit support provided to Project Company or its affiliates by a Lender, such Lender may require that Project Company or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the Solar Facilities and/or administrative services with respect to this Lease or the PPA (the “**Successor Provider**”). Landlord agrees to accept performance from any Successor Provider so appointed so long as (a) Landlord consents to such Successor Provider, which consent shall not be unreasonably withheld, conditioned or delayed, and (2) the Successor Provider agrees to perform in accordance with the terms of this ~~Agreement Lease~~ and the PPA.

7.57.6 Assignment of Project Company’s Interest. Project Company may assign its rights or interest in the Lease (including for the avoidance of doubt the easements granted herein) only with the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that Project Company may, without further consent of Landlord, and upon written notice to Landlord of such assignment and the assignee’s written agreement to assume Project Company’s rights and obligations under this Lease, assign its rights and obligations under this Lease to ~~a limited liability entity to be formed by Project Company that will be the ultimate Project Company under the Lease and Seller under the PPA~~ an affiliate, the purchaser of all or substantially all of the Project, and in accordance with Section 7.1 to a Lender. In no event may the Lease be assigned unless the assignee agrees to assume Project Company’s obligations under this Lease and the PPA, and such assignee has the financial and substantive ability to fulfill all Project Company obligations under this Lease.

ARTICLE VIII

CONDEMNATION

8.1 **Effect of Condemnation.** If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Project Company’s construction, installation or operation of Solar Facilities on the Premises, at Project Company’s option, the parties will either amend this Lease to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Lease to Project Company, together with any corresponding payments, or this Lease will terminate in which event neither ~~P~~party will have any further obligations.

8.2 **Condemnation Proceeds.** All payments made by a condemnor on account of a taking by eminent domain will be the property of the Landlord, except that Project Company will be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Lease. Project Company will have the right to participate in any condemnation proceedings to this extent.

ARTICLE IX

DEFAULT/TERMINATION

9.1 **Definition of Breach.** Each of the following will constitute a “**Breach**” that will permit the non-defaulting Party to terminate this Lease or pursue other remedies available at law or equity:

a. any failure by Project Company to pay any amounts due under Article III if the failure to pay continues for thirty (30) days after written notice from Landlord; or

b. any other material breach of this Lease by either Party which continues for thirty (30) days after written notice of default from the non-defaulting Party or, if the cure will take longer than thirty (30) days, provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Breach, if (A) the breaching Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the non-breaching Party resulting from the failure to cure the Breach.

9.2 **Surrender.** Upon the termination or expiration of this Lease, the terms of Section 4.4 herein shall apply. For the period between the date of termination or expiration of this Lease and the date on which Project Company completes removal of the Solar Facilities as required under Section 4.4 of this Lease (or the date upon which Landlord purchases the Solar Facilities under Section 4.4(b) of this Lease), Project Company will continue to pay Solar Rent (as defined in Exhibit F) for the Solar Facilities installed on the Premises.

9.3 **Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF LANDLORD AND PROJECT COMPANY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS LEASE, EXCEPT WHERE SUCH DAMAGES ARE REQUIRED TO BE IMPOSED BY APPLICABLE LAW.**

9.4 **Delinquent Payments.** If Project Company fails to pay Landlord any sum to be paid by Project Company hereunder within thirty (30) days after such payment is due, interest on the unpaid amount will accrue interest at the annual rate of the of the Prime Rate published in the Wall Street Journal plus 2.5% each day ~~at a rate of ten percent (10%) per annum~~ or the maximum rate allowed by law, whichever is less, from thirty (30) days after the date such payment was due until the date such payment is made.

9.5 **Disputes.** The Parties shall attempt to first resolve informally any dispute arising from or relating to this Lease. If after a good faith attempt at such informal dispute resolution either Party believes that such attempts will not be successful, such Party may initiate binding arbitration in either **Santa Rosa or San Francisco**, California. The arbitration shall be administered by JAMS² or other agreed upon recognized arbitration service in accordance with its Comprehensive Arbitration Rules and Procedures using a panel of three arbitrators, and judgment on any award may be entered in any court of competent jurisdiction. Each Party shall select one arbitrator. The arbitrators selected by the parties will select a third arbitrator who will be the chair. In selecting an arbitrator, the Parties shall each provide to the other a list of five (5) arbitrators, and any arbitrator common to both lists shall be selected. If there is no arbitrator

Commented [DS16]: Conformed to PPA.

Commented [MOU17]: Needs to be closer to the District

Formatted: Highlight

² <https://www.jamsadr.com>

~~common to both lists, the Parties shall confer in good faith to mutually select an arbitrator. If the Parties cannot agree after such good faith efforts, the Party initiating the dispute may at that point initiate judicial proceedings. If the Parties agree, a mediator may be engaged prior to arbitration. The prevailing Party in any dispute arising out of this Agreement-Lease shall be entitled to reasonable attorneys' fees and costs, provided that the cost of mediation shall be borne equally by the Parties notwithstanding the outcome of any arbitration or judicial proceeding. Landlord hereby grants a limited waiver of sovereign immunity from suit to compel or enforce Landlord's compliance with the terms of this Lease.~~

Formatted: Font: Bold

ARTICLE X

REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties of the Parties. Each Party represents and warrants to the other Party as follows as of the Effective Date:

Formatted: Font: Not Bold

a. Such Party is duly formed, validly existing, and in good standing under the applicable laws of the state of such party's formation. Such party is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Lease, except where failure to be so qualified, in the aggregate would not reasonably be expected to adversely affect its ability to perform its obligations under this Lease.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

b. Such Party has full power and authority to execute, deliver, and perform such Party's obligations under this Lease. The execution of this Lease on behalf of such Party by the individual whose signature is set forth at the end of this Lease has been duly authorized by all necessary action on the part of such Party.

c. This Lease has been duly and validly executed and delivered by such Party and constitutes the legal, valid, and binding obligation of such party, enforceable against such Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or other similar laws of general application affecting creditors' rights or by general equitable principles.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

d. The execution, delivery, and performance of this Lease will not conflict with, result in a breach or default, violate, or require consent or approval of any person or entity under: (a) such Party's charter, organizational, or similar formation documents; (b) with or without notice or lapse of time or both, the provisions of any agreement to which such Party is a party, by which such Party is bound, or to which such Party is subject; or (c) any applicable laws, which violations, individually or in the aggregate, would adversely affect such Party's performance of any obligations under this Lease.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Indent: Left: 0", Tab stops: 1", List tab + Not at 3.5"

e. Such Party is not in violation of any applicable laws, or any judgment entered by any governmental authority which violations, individually or in the aggregate, would adversely affect such Party's performance of any obligations under this Lease.

9.5

ARTICLE XI

MISCELLANEOUS

~~10.11.1~~ **Notice.** Notices, consents or other documents required or permitted by this Lease must be given by personal delivery, reputable overnight courier or certified U.S. mail postage prepaid and will be sent to the respective Parties as follows (or at such other address as either Party may designate upon written notice to the other Pparty in the manner provided in this paragraph) and will be deemed delivered upon actual delivery or refusal, if personally delivered, upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier and on the fourth business day after deposit in the U.S. mail if sent by certified mail:

To Landlord: Mission Springs Water District
66575 Second Street
Desert Hot Springs, CA 92240

To Project Company: Staten Solar, Inc.
175 Northtech Parkway
San Jose, CA 95134

~~10.11.1~~ **Relationship of the Parties; No Third Party Beneficiaries.** The duties, obligations and liabilities of each of the Pparties are intended to be several and not joint or collective. This Lease will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Landlord and Project Company or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Pparty. Landlord and Project Company will not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Pparty. Except for the rights of Lenders set forth above, no provision of this Lease is intended to nor will it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Lease, or of any one or more of the terms of this Lease, or otherwise give rise to any cause of action in any person not a Pparty to this Lease.

~~10.211.2~~ **Entire Agreement.** It is mutually understood and agreed that this Lease constitutes the entire agreement between Landlord and Project Company and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Lease. This Lease may not be amended except in a writing executed by both Pparties. All exhibits attached to this Lease are deemed incorporated herein as if fully set forth in the body of this Lease.

~~10.311.3~~ **Governing Law.** This Lease is made in and will be governed by the laws of California, ~~and the venue for any dispute will be in Riverside County.~~ The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Pparty will not be employed in the interpretation of this Lease. In interpreting this Lease, time is of the essence.

Commented [DS18]: Addressed in the dispute clause above.

~~10.411.4~~ **Cooperation.** Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective Parties. If, at any time during the Term, Project Company deems it to be necessary or desirable to meet legal or regulatory requirements, Project Company may request that Landlord re-execute a new lease substantially in the form of this Lease with a term equal to the Term

remaining as of the date of execution of the new lease, and Landlord will execute and enter into the new lease with Project Company or its designee to the extent Landlord may do so under applicable law. In the event of inaccuracies or insufficiencies in the legal description of the Premises, this Lease will be amended to correct the inaccuracies or insufficiencies.

~~10.511.5~~ **Waiver.** Neither Party will be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Lease will not be deemed a waiver with respect to any subsequent or other matter. In the event that Project Company makes any overpayments to Landlord hereunder, Project Company will offset the amount of such overpayments to Landlord against future payments due to Landlord from Project Company hereunder.

~~10.611.6~~ **Force Majeure.**

a. Neither Landlord nor Project Company will be liable to each other, or be permitted to terminate this Lease, for any failure to perform an obligation of this Lease to the extent such performance is prevented by a Force Majeure. For the purposes of this Lease, **Force Majeure** means any circumstance not within the control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance, despite the exercise of due diligence, cannot be or be caused to be prevented or avoided by the affected Party; and (b) such circumstance is not due to the affected Party's negligence or intentional misconduct. Subject to the foregoing conditions, and except as otherwise provided herein, Force Majeure events may include events or occurrences in the nature of (i) strikes or other labor disputes other than strikes or labor disputes solely by employees of the Party claiming the Force Majeure event (or its affiliates or contractors) or as a result of such Party's failure to comply with a collective bargaining agreement, (ii) riot or civil unrest, epidemics, pandemics, earthquakes, severe weather, fire or other physical or natural disaster, (iii) work stoppages, slowdowns, labor or manpower shortages, equipment or material shortages, or (iv) actions or failures to act of any Governmental Authority, including a change in applicable law that prevents, limits, increases the cost or reduces the benefit to Project Company of performing its obligations under this Agreement, in each case will mean an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow down, or lock out; explosion; fire; earthquake; abnormal and unanticipated weather condition or actions of the elements, including hurricane, flood, lightning, wind, and drought (each as "Force Majeure Event") to the extent such failure to perform, by exercise of due diligence and foresight, could not reasonably have been avoided. Events related to natural disaster shall be defined by evacuation warnings of the appropriate Government Authority.

b. Except as otherwise expressly provided to the contrary in this Lease, if either Party is rendered wholly or partly unable to timely perform its obligations under this Lease because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or

Formatted: Font: Bold

Commented [DS19]: Conformed to definition in the PPA.

Commented [DB20]: check for consistency with corresponding PPA language.

extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Procurement and Construction Period shall be extended day for day for each day performance is suspended due to a Force Majeure event that occurs during the Procurement and Construction Period. If a Force Majeure event continues for a period of 12 months or more and prevents a material part of the performance by a Party hereunder, either Party shall have the right to terminate this Lease without fault or liability to the other Party, except with respect to amounts accrued by unpaid prior to termination and Section 4.4.

~~10.7~~11.7 **Confidentiality.**

a. **Confidential Information.** To the extent permitted by law, Landlord will maintain in the strictest confidence, for the benefit of Project Company and any assignee or transferee of Project Company, all information pertaining to the financial terms of or payments under this Lease, Project Company's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Project Company, any assignee or transferee, or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord or its employees or agents; (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity; or (iii) is required to be disclosed under applicable law with respect to California local governments, including without limitation the California Public Records Act, Cal. Gov't Code §§ 6250 et seq. Landlord will not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Project Company, any assignee or transferee. Notwithstanding the foregoing, Landlord may disclose such information to Landlord's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landlord regarding this Lease; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Landlord desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landlord in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement will run to the benefit of and be enforceable by Project Company and any assignee or transferee of Project Company.

b. **Public Records Act.** In the event that Landlord receives a California Public Records Act request for such Confidential Information, Landlord shall give notice to Project Company of the request within three (3) business days of receipt, along with a copy thereof, and consult and reasonably cooperate with Project Company concerning the request and Landlord's anticipated response thereto. If Project Company objects to the release of all or any part of a record, Project Company shall cite the statutory basis therefor. In that event Landlord agrees not to release such record; provided, however, that Project Company shall indemnify, defend with counsel reasonably acceptable to Landlord, and hold Landlord harmless from and against any and all such actions and judgments entered thereunder, including reasonable attorneys' fees and costs incurred in defending such action and plaintiff's attorneys' fees and costs awarded by the court in a final judgment on the action. The provisions of this Section 10.7 will survive the termination or expiration of this Lease.

~~10.8~~11.8 **Goodwill and Publicity.** The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Lease and the PPA, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Lease or PPA, provided that nothing herein shall affect or otherwise limit Landlord's or Project Company's disclosure obligations under applicable law. Neither Party shall make any press release or public announcement of the specific terms of this Lease or the PPA (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Lease and PPA, including the ownership of Environmental Attributes (as defined in the PPA) and ~~Environmental-Tax~~ Incentives (as defined in the PPA) and any related reporting rights.

~~10.9~~11.9 **Tax Credits.** ~~Project Company shall own all [environmental attributes.] and be entitled to the benefit of all tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority (collectively "Tax Credits"), applicable to the ownership and operation of the Solar Facility.~~ If under Legal Requirements the holder of a leasehold interest in the nature of that held by Project Company under this Lease becomes ineligible for any ~~tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority~~ Tax Credits, then, at Project Company's option, Landlord and Project Company will amend this Lease or replace it with a different instrument, to the extent possible under applicable law, so as to convert Project Company's interest in the Premises to a substantially similar interest that makes Project Company eligible for such ~~tax credit, benefit or incentive~~ Tax Credits and to the extent such amended or replacement lease reflect the intent of the Parties in entering into this Lease, and which contains the same material terms as this Lease.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

~~10.10~~11.10 **Severability.** Each provision hereof will be valid and will be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any person or circumstance will to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, provided that the remaining provisions continue to reflect the intent of the ~~P~~parties in entering into this Lease.

~~10.11~~11.11 **Counterparts.** This Lease may be executed in two or more counterparts (which may be delivered electronically (including through DocuSign or another electronic signature delivery service)) and by different ~~P~~parties on separate counterparts, all of which will be considered one and the same agreement and each of which will be deemed an original. A signed copy of this Lease delivered by e-mail or other means of electronic transmission is deemed to have the same legal effect as executing and delivering this Lease in the presence of the other Party to this Lease.

11.12 **Memorandum of Lease.** Landlord and Project Company will execute in recordable form and Project Company ~~will~~may in its sole discretion then record a memorandum of this Lease in the form attached hereto as Exhibit I. Landlord hereby consents to the recordation of the interest of an assignee in the Premises.

10.1211.13 Interpretation. For purposes of this Lease: (i) a reference to any person or entity includes any successor, heirs, or permitted assigns of such person or entity; (ii) the plural of any word includes the singular and vice versa; (iii) words denoting any gender include all genders; (iv) "days" shall mean calendar days, unless the term "business days" is used; (v) all references to "dollars" means U.S. Dollars; (vi) "hereof", "herein", "hereby", "hereto" and "hereunder" refer to this Lease as a whole and not to any particular Article or Section; (vii) "include", "includes" and "including" mean including without limitation; (viii) headings used in this Lease are for ease of reference only and do not affect in the construction or interpretation of this Lease; (ix) relative to the determination of any period of time, "from" means including and after, "to" means "to by excluding" and "through" means "through and including"; (x) whenever any period of the time expires or payment to be made hereunder shall be stated to be due on a day that is not a business day, the expiration thereof or the due date thereof shall be extended to the next succeeding business day; and (xi) any specification of a right or remedy in favor of a Party in this Lease shall be deemed to be cumulative with and in addition to all other rights and remedies provided to such Party by the other provisions of this Lease, at law or in equity. Unless the context otherwise requires, references in this Lease: (i) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Lease and any sub-exhibits, sub-parts, components or attachments including therewith; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

Formatted: Indent: Left: 0", Tab stops: 1", List tab + Not at 3.5"

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the ___ day of August, 2024.

LANDLORD

MISSION SPRINGS WATER DISTRICT

By: _____

Its: _____

PROJECT COMPANY

STATEN SOLAR, INC.

a Delaware corporation

By: _____

Its: _____

2843897.1