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**SOLAR POWER PURCHASE AND ENERGY STORAGE SERVICES AGREEMENT**

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This Solar Power Purchase and Energy Storage Services Agreement (this “**Agreement**”), is made and entered into as of August 28, 2018 (the “**Effective Date**”), by and between **CALIFORNIA SOLAR 1, LLC**, a Delaware limited liability company (“**Supplier**”), and **COUNTY OF TULARE** (“**Customer**”). Supplier and Customer are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

**WHEREAS**, Customer owns certain property located at the following location (collectively, the “**Premises**”):

<b>Premises</b>	<b>Address</b>
Tulare Akers Professional Center	5300 W. Tulare Ave., Visalia, CA 93277

**WHEREAS**, Customer desires to buy and Supplier desires to sell all electricity produced by the solar energy photovoltaic generating system (the “**PV System**”) described herein.

**WHEREAS**, Customer also desires to receive and Supplier wishes to provide services (the “**Energy Storage Services**”) from a battery energy storage system (the “**BESS**”) to be installed by Supplier at the Premises and integrated with the PV System (the BESS and the PV System, collectively, the “**System**”) at the location shown on the site plan (the “**Site Plan**”). The Energy Storage Services are described in further detail in Section 2.5.

**WHEREAS**, the scope of work attached as Exhibit A (the “**Scope of Work**”) describes in detail the System that Supplier will design, construct, install, own, operate and maintain at the Premises (collectively, the “**Project**”).

**WHEREAS**, following the execution of this Agreement, Customer and Supplier will enter into a solar and BESS site lease agreement, in the form that will be attached hereto as Exhibit G (a “**Site Lease**”), under the terms of which Customer will lease those portions of the Premises indicated in the Site Plan to Supplier for the purposes of constructing, operating and maintaining the System.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**DEFINED TERMS; RULES OF INTERPRETATION**

Section 1.1 Defined Terms. Capitalized terms used in this Agreement, which are not otherwise defined herein, shall have the meanings ascribed to them in Exhibit E.

Section 1.2 Rules of Interpretation. The rules of interpretation in Exhibit F shall apply to this Agreement unless expressly provided otherwise.

**ARTICLE 2**  
**SALE OF ENERGY OUTPUT; PROVISION OF ENERGY STORAGE SERVICES**

Section 2.1 Sale and Purchase of Energy Output; Delivery of Energy Storage Services; Supplier’s Provision of Services to Third Parties; Customer’s Right to Sell Excess Output.

(a) Supplier will generate, deliver and sell all Energy Output generated by the PV System to Customer and will provide the Energy Storage Services to the Customer using the BESS, and Customer

will take delivery and purchase from Supplier all Energy Output from the PV System and the BESS delivered to the Interconnection Points, at the Contract Price shown on Exhibit B for the applicable Contract Year, as such Contract Price may be adjusted pursuant to the terms hereof, including without limitation for loss of Insolation arising from a breach of Section 7.5(a). Title to and risk of loss of all Energy Output and Energy Storage Services will pass from Supplier to Customer at the Interconnection Points.

(b) For the convenience of the Customer, Supplier has included its charges for the delivery of Energy Output from the PV System and delivery of Energy Storage Services into a single Contract Price.

(c) Customer acknowledges and agrees that, with Customer's consent, Supplier may use the System to provide services to one or more third parties in addition to Customer; *provided, however*, that any such use shall not in any way constitute a waiver or reduction of any of Customer's rights or Supplier's obligations under this Agreement.

(d) Customer shall have the right, in its sole discretion, to sell any excess Energy Output generated by the PV System to the applicable Utility and/or to one or more third parties, for Customer's sole benefit and upon such terms as Customer may approve; *provided, however*, that any such sale shall not in any way constitute a waiver or reduction of any of Customer's obligations or Supplier's rights under this Agreement.

Section 2.2 Expected System Output. Supplier has estimated that the System will deliver the Expected Energy Output indicated on Exhibit C. The Parties acknowledge that the System's performance and size may change as planning and engineering is completed, and the final Expected Energy Output will be determined by such planning and engineering. The Parties further acknowledge that the insolation level of the PV System may be less than assumed in the initial calculation of the Expected Energy Output (e.g., due to shading or shadowing), and the final Expected Energy Output from the PV System and the capacity of the BESS to deliver the Energy Storage Services will be determined on a System's Commercial Operation Date by Supplier, acting in its reasonable discretion, to reflect any such reduction of insolation available to the PV System and changes in the capacity of the BESS.

Section 2.3 Environmental Attributes, Environmental Incentives and Tax Benefits. Customer's purchase of Energy Output and Energy Storage Services includes Environmental Attributes associated with the System, but does not include Environmental Incentives, Tax Benefits or other incentives that exist as of the Effective Date or that may become available due to any Change in Law. Customer will be the sole owner of any Environmental Attributes and Supplier shall be the sole owner of the System, any Environmental Incentives or Tax Benefits derived from the ownership of the System and, until delivered or provided to the Customer at the Interconnection Point, all Energy Output generated by, and Energy Storage Services provided from the System. Any grant, rebate, incentive payment, or credit by the Utility, the Federal Government, the State, or any other agency paid as a result of the design, development, construction, operation, and maintenance of the System shall inure to the benefit of Supplier. Customer may register Environmental Attributes in its sole discretion; Supplier will not be required to register or pay for the registration of Environmental Attributes. Supplier will cooperate in good faith to enable Customer to obtain all available Environmental Attributes, including assignment to Customer of any Environmental Attributes received by Supplier in connection with the System or this Agreement. Customer will cooperate in good faith to enable Supplier to obtain all available Environmental Incentives, and Tax Benefits, including assignment to Supplier of any Environmental Incentives received by Customer in connection with the System or this Agreement. If the standards used to qualify the System for Environmental Attributes, Environmental Incentives or Tax Benefits to which Customer or Supplier is entitled under this Agreement are changed or modified, Customer shall, at Supplier's request and expense, use all reasonable efforts to cause the System to comply with new standards as changed or modified.

Section 2.4 Production Guarantee. Supplier guarantees that not less than ninety percent (90%) of the Expected Energy Output tabulated in Exhibit C hereof (subject to adjustment as set forth below) will be produced every Measurement Period during the Term (the “*Production Guarantee*”). All Energy Output delivered to the Interconnection Point prior to the Final Commercial Operation Date shall be included in the Energy Output for the first Contract Year. After the end of every Contract Year beginning with the third Contract Year, Supplier will compare the Energy Output that has occurred in the aggregate over the Measurement Period then ended with the aggregate Expected Energy Output for such Measurement Period from Schedule C hereof after (A) reducing Expected Energy Output to account for any loss of Energy Output attributable to (i) Scheduled Outages as defined in Section 5.6(a), (ii) decreases in Insolation as defined in Section 7.5(a)(i), (iii) Customer Misconduct as defined in Section 6.2(a), and (iv) and Excusable Events, and then (B) multiplying the result by the Weather Adjustment (collectively, the “*Adjusted Expected Energy Output*”). “*Measurement Period*” means each rolling three (3) year period commencing with the first day of the month immediately following the Final Commercial Operation Date.

(a) Energy Savings Report. Supplier will provide a detailed reconciliation of the Production Guarantee to Customer annually, within ninety (90) days after the end of each Contract Year. Such reconciliation will compare annual Energy Output, Expected Energy Output, Adjusted Expected Energy Output, and any Production Shortfalls and Production Shortfall Penalties that may have occurred.

(b) Production Shortfall. If the Energy Output for a Measurement Period was less than ninety percent (90%) of the Adjusted Expected Energy Output for such Measurement Period, then the “*Production Shortfall*” (in units of kWh) will be the *difference* between (i) ninety percent (90%) of the Adjusted Expected Energy Output for such Measurement Period *minus* (ii) the aggregate Energy Output for such Measurement Period. The existence of a Production Shortfall will not be an event of default, but Supplier will owe Customer a Production Shortfall Penalty which will be credited to Customer on the subsequent Energy Output Invoice.

(c) Production Shortfall Penalty. The “*Production Shortfall Penalty*” will be an amount, expressed in Dollars, calculated by *multiplying* (i) the Production Shortfall (expressed in kWh) by (ii) the Shortfall Rate.

(d) Shortfall Rate. The “*Shortfall Rate*” will be \$0.0251 per kWh, which is the difference between (A) the avoided cost of electricity purchased from the Utility on the Effective Date, which is \$0.1361 per kWh, minus (B) the Contract Price for Year 1, which is \$0.1110 per kWh.

(e) Weather Adjustment. Whenever the measured annual global incident irradiation for a Contract Year is less than the expected annual global incident irradiation, the Adjusted Expected Energy Output for such Contract Year will be multiplied by a ratio, expressed as a percentage, calculated by dividing (i) the measured annual global incident irradiation for such Contract Year by (ii) the expected annual global incident irradiation (the “*Weather Adjustment*”). For purposes of this adjustment, the “expected annual global irradiation” with respect to the PV System is as shown on Exhibit D hereof.

Section 2.5 BESS Services. In addition to the sale of Energy Output generated by the PV System during the Term, for the Contract Price, Supplier will also provide the following Energy Storage Services in furtherance of the storage in the BESS of Energy from the PV System, as well as the subsequent discharge of Energy from the BESS:

(a) Incentive Compliance and Reporting: Supplier shall provide all operation and monitoring services required in order to comply with the California Self-Generation Incentive Program (“*CA SGIP*”). Supplier shall be responsible for all data gathering and submission compliance as required by CA SGIP. Customer will designate Supplier as the assigned “Payee” on the CA SGIP Incentive Claim Form.

Customer will cooperate in good faith to enable Supplier to obtain all CA SGIP Incentives received by Customer in connection with the System.

(b) Demand Charge Management: Supplier shall provide such operation, monitoring and support services to optimize the BESS's capacity and schedule the BESS to reduce peak load in an effort to mitigate Demand Charges, while maximizing the Environmental Incentives (including CA SGIP) and Tax Benefits of the System. Supplier, in its sole discretion, will determine the charging source for the BESS, which may be up to one hundred percent (100%) from the PV System, and may prevent utility grid power from flowing into the BESS. "Demand Charges" means the local distribution utility fees based upon the highest 15-minute period of demand (kW) usage for each billing period (including peak time, partial peak, and off-peak periods) for the System over each monthly bill cycle applicable to the System.

(c) Energy Storage System Technology. All software, Supplier documentation, installation drawings, and other proprietary technology installed in conjunction with the BESS or otherwise provided by Supplier is the sole property of Supplier. Customer agrees that it will not access in any way whatsoever or attempt to gain access to any software, data, and/or information generated by the BESS. Customer agrees that it will only have access to BESS data and/or software that Supplier makes available to Customer pursuant to this Agreement.

### ARTICLE 3 CONDITIONS PRECEDENT

Section 3.1 Supplier's Conditions Precedent. The obligations of Supplier under this Agreement to construct, install, maintain, and operate the System and to sell Energy Output generated thereby and provide Energy Storage Services therefrom shall be conditioned on the occurrence of each of the following conditions ("**Supplier's Conditions Precedent**") except to the extent waived by Supplier:

(a) Site Leases. The Site Leases and any subordination, non-disturbance and attornment agreement required thereunder shall have been duly executed by the Parties and shall be in full force and effect;

(b) Approvals & Permits. All Required Approvals shall have been obtained;

(c) CEQA. Customer, as lead agency, shall have complied with all requirements under CEQA for installation of the System;

(d) Interconnection. Customer shall have executed and submitted, and Supplier shall have entered into, as necessary, all contracts and delivered all other documents required by the Utility in connection with this Agreement and the transactions contemplated hereby (collectively, "**Utility Documents**") to the reasonable satisfaction of Supplier, or the Utility shall have waived the requirement for such Utility Documents;

(e) EPC Contracts. Supplier and its prime contractor (the "**EPC Contractor**") shall have entered into a contract for construction and installation of the System (the "**EPC Contract**"), on terms acceptable to Supplier;

(f) Customer Authorizations. Customer shall have signed all authorizations and other documents reasonably required by Supplier to obtain any Environmental Incentives, Tax Benefits or other incentives contemplated in Section 2.3;

(g) No Defaults. No default by Customer hereunder, or any event which, with the giving of notice or the lapse of time or both, would become a Customer default, shall have occurred and be continuing;

(h) Financing. Supplier shall have received or shall have obtained all commitments and contractual rights to receive all equity, debt, tax equity and other financing, in such forms and from such parties as is satisfactory to Supplier and as Supplier determines necessary to develop, construct, operate and maintain the System during the Term, and all conditions precedent to the effectiveness of any and all such financings and the drawdown of funds thereunder shall have been satisfied or waived to Supplier's satisfaction;

(i) Representation & Warranties. The representations and warranties of Customer set forth in this Agreement shall be true and correct in all material respects;

(j) Financial Statements. Supplier shall have received and accepted the Financial Statements of Customer;

(k) Site Condition. Supplier shall have completed a physical inspection of the Premises including, if applicable, review of real estate due diligence and of geotechnical studies provided to Supplier, to confirm the suitability of the Premises for the System, to the extent that the foregoing are reasonably observable consistent with Prudent Industry Practices;

(l) Insurance. Customer shall have submitted evidence of the insurance required under this Agreement;

(m) Notice to Proceed. Customer shall have issued a notice to proceed with System installation; and

(n) DIR Registration. Customer shall have registered the Project with the California Department of Industrial Relations, using Form PWC-100.

### Section 3.2 Customer's Conditions Precedent.

(a) The obligations of Customer under this Agreement to issue the notice to proceed with System design and installation shall be conditioned on the occurrence of each of the following conditions, as applicable, except to the extent waived by Customer:

(i) Insurance. Supplier shall have submitted evidence of the insurance required under this Agreement satisfactory to Customer, and maintained such insurance coverage for the duration of the Term; and

(ii) Layout and Diagram. Customer shall have received and given approval to Supplier's proposed layout and preliminary single-line diagram for each Premises and Design Documents. Customer shall have received and given approval to Supplier's design documents, including drawings and written specifications, for the System at 50% completion, and 100% completion intervals under Section 5.1(b); and

(iii) Final Agreement. Customer and Supplier shall have reached final agreement on any adjustments to the System, Site Plans, Scope of Work, Contract Price, or other material matters hereunder before Customer issues a notice to proceed with installation.

(b) The obligations of Customer under this Agreement to purchase Energy Output and receive and pay for the Energy Storage Services shall be conditioned on the occurrence of each of the following conditions, as applicable, except to the extent waived by Customer:

(i) Supplier shall have completed installation of the System in accordance with the final approved Scope of Work, commissioned the System, and certified to Customer that Commercial Operation of the System has been achieved.

**ARTICLE 4**  
**TERM; EARLY TERMINATION**

Section 4.1 Term. The term of this Agreement will commence on the Effective Date and continue for twenty-five (25) years after the Final Commercial Operation Date (the “**Term**”), unless and until terminated earlier pursuant to the terms of this Agreement.

Section 4.2 Supplier Early Termination. Supplier shall have the right (but not the obligation) to terminate this Agreement and the Site Lease(s), and/or to remove all or a part of the System from the scope of this Agreement, prior to the expiration of the Term without liability, should any of the following occur:

(a) prior to the Commercial Operation Date for a System, Supplier determines in its sole discretion that (i) such System is not financially viable, (ii) the cost of Utility interconnection or electrical infrastructure upgrades for such System are material, or (iii) that the site conditions at the relevant Premises (e.g., shading, Environmental Conditions, Unforeseen Conditions) adversely impact such System;

(b) any of the Supplier’s Conditions Precedent have not been met or waived by Supplier within ninety (90) days after the Effective Date;

(c) Supplier is unable, after diligent efforts, to obtain or maintain all Required Approvals;

(d) one or more Environmental Incentives is eliminated or altered, or another Change in Law, rule, or regulation occurs, that results in a material adverse effect on Supplier or the terms of this Agreement, except to the extent that this Agreement is amended pursuant to Section 10.1;

(e) an Extended Material Force Majeure, as described in Section 9.2, occurs;

(f) Customer fails to maintain in full force and effect the insurance required by this Agreement; or

(g) the Site Lease is terminated for any reason.

Section 4.3 Customer Early Termination. Customer shall have the right (but not the obligation) to terminate this Agreement and the Site Lease(s), and/or to remove all or a part of the System from the scope of this Agreement, prior to the expiration of the Term without liability should any of the following occur:

(a) prior to the Commercial Operation Date for a System, Customer determines in its sole discretion that the cost of Utility interconnection or electrical infrastructure upgrades for such System are material;

(b) any of the Customer’s Conditions Precedent have not been met or waived by Customer within ninety (90) days after any applicable deadline;

(c) Customer fails to give approval or deemed approval to Supplier’s proposed design and installation plans (including drawings, written specifications, installation schedule, mobilization plans, delineation of proposed laydown areas for each Premises, and such other pre-installation submittals as Customer may require) at 50% and 100% completion intervals in accordance with Section 5.1(b);

(d) Customer and Supplier fail to reach final agreement on any adjustments to the System, Site Plans, Scope of Work, Contract Price, or other material matters hereunder before Customer issues a notice to proceed with installation;

(e) an Extended Material Force Majeure, as described in Section 9.2, occurs; or

(f) failure by Supplier to maintain in full force and effect the insurance required by this Agreement.

Section 4.4 Removal of System at End of Term. Except as otherwise provided herein or in a Site Lease, Supplier shall, within one hundred eighty (180) days following the end of the Term or earlier termination of this Agreement, at Supplier's sole cost and expense, remove the System from the Premises, restore the Premises to their original condition, normal wear and tear excluded, and repair any damages to the Premises caused by such removal; *provided, however*, that Supplier shall not be obligated to remove any wiring or conduits, or other subterranean materials, that are embedded in the Premises. Customer shall provide Supplier and its contractors, agents, consultants and representatives access at all reasonable times to the Premises and the System for purposes of such removal and restoration. If Supplier fails to remove the System by such time, Customer may consider the System(s) abandoned and shall have the right, but not the obligation, to remove the System(s) and restore the Premises to their original condition, normal wear and tear excluded, and repair any damages to the Premises caused by such removal, all at Supplier's cost.

Section 4.5 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations with respect to (a) the payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement or (b) those provisions of this Agreement that, by their nature and context, are intended to survive the expiration or termination of this Agreement, including provisions regarding confidentiality, indemnification and post-termination obligations, which shall survive until the expiration of the applicable statute(s) of limitations.

## **ARTICLE 5 INSTALLATION AND MAINTENANCE OF THE SYSTEMS**

### Section 5.1 Construction of the System by Supplier.

(a) Supplier shall, at its sole cost and expense, design, commission and hire a licensed contractor to construct and install the System substantially in accordance with the description of the System set forth in Exhibit A attached hereto and Applicable Laws. If Supplier encounters Unforeseen Conditions or discovers that information provided by Customer and relied upon by Supplier is inaccurate, the Contract Price, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Supplier. In such event, the Parties will negotiate such equitable adjustment in good faith.

(b) Supplier will prepare and submit all drawings and specifications to Customer for review. Supplier will provide two submittal packages to Customer: 50% design and installation, including a bill of materials, and 100% design and installation, which shall include the permitted set of construction documents. Customer will review the documents and provide any comments in writing to Supplier within ten (10) Business Days after receipt of the documents. If Customer does not provide any comments in writing to Supplier within ten (10) business days, such plans shall be deemed accepted by Customer. Supplier will incorporate appropriate Customer comments into the applicable drawings and specifications. Supplier reserves the right to issue the drawings and specifications in phases to allow construction to be performed in phases. If Customer fails to provide written comments within the ten (10) Business Day period, Customer will be deemed to have no comments and to have given the notice to proceed with construction. If any Customer Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, Supplier will be entitled to an equitable adjustment of the Contract Price, schedule, and other terms of this Agreement if such changes and/or modifications are material.

(c) Customer shall ensure that Supplier and its contractors have reasonable access at all reasonable times to the Premises, in accordance with the Site Leases or otherwise, for the purpose of designing, commissioning, constructing, installing, testing, operating, inspecting, maintaining, repairing, removing and replacing the System, and to any documents, materials and records of Customer relating to the Premises that Supplier or its contractors reasonably request in conjunction with such activities. Supplier shall, and shall cause its contractors to, comply with all reasonable access and notice procedures agreed upon between Customer and Supplier from time to time in writing relating to activities conducted by or on behalf of Supplier on the Premises relating to the System, which may include requirements for advanced notice to Customer's representatives of access by Supplier or its contractors for any such purposes. During any such activities, Supplier shall, and shall cause the EPC Contractor to, comply with Customer's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Supplier), and Supplier shall, and shall cause its contractors to, conduct such activities in such a manner and such a time and day as to minimize interference with Customer's activities to the extent reasonably practicable. Customer reserves the right to revoke access privileges to any person employed or contracted by Supplier or its contractors that the Customer reasonably deems to be disruptive, intemperate, unsafe, or who violates any law where Customer has notified Supplier of same and Supplier or its contractors have failed to cure same promptly after receipt of such notice. Notwithstanding anything to the contrary in this () , Supplier and its contractors shall be allowed immediate access to the Premises and the System in connection with any emergency condition then existing with respect to the System that could reasonably be expected to pose an imminent threat to the safety of persons or property.

(d) Supplier shall ensure that the System meets all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers ("IEEE"), and accredited testing laboratories such as Underwriters Laboratories, and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. This requirement shall include, but not be limited to, the provisions of IEEE Standard 929, UL Standard 1741, and Southern California Edison's Electric Rule 21 – Generating Facility Interconnections, or the equivalent rule of Pacific Gas & Electric Company, as applicable to the particular Premises location.

(e) Supplier shall ensure that all major System components (including PV panels and other generation equipment, inverters and meters) are on the verified equipment list maintained by the California Energy Commission. Any other equipment, as determined by the applicable Utility, must be verified as having safety certification from a Nationally Recognized Testing Laboratory.

(f) The Parties agree that if Supplier procures materials for use hereunder before the Parties reach final agreement on any adjustments to the System, Site Plans, Scope of Work, Contract Price, or other material matters hereunder, then Supplier does so at its sole risk and expense and Customer will have no responsibility for the cost of such materials unless otherwise agreed in writing.

#### Section 5.2 Maintenance.

(a) During the Term, Supplier will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, including (i) operating and maintaining the System in good condition and repair and in accordance with Applicable Laws, requirements of applicable insurance policies and permits, Prudent Industry Practices, and the terms of this Agreement and the Site Leases, and (ii) reasonably monitoring the System's performance in an effort to minimize any loss of Energy Output caused by a System malfunction. Customer will pay for repairs and maintenance of the Premises, and of the System to the extent resulting from Customer's (w) failure to maintain the Premises



to a reasonable standard, (x) negligence, (y) willful misconduct, or (z) breach of this Agreement or the Site Lease.

(b) Supplier shall not be responsible for any work done by others on any part of the System unless Supplier authorizes that work in advance in writing. Supplier shall not be responsible for any loss, damage, cost, or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Supplier or Supplier's contractors. If the System requires repairs for which Customer is responsible, Customer shall pay Supplier for diagnosing and correcting the problem at Supplier's or Supplier's contractors' then-current standard rates. Supplier shall provide Customer with reasonable notice prior to accessing the System to make standard repairs. When performing repairs to, and maintenance of, the System, Supplier or Supplier's contractors shall comply with all Applicable Laws.

(c) If Supplier incurs incremental costs to maintain the System due to Unforeseen Conditions or other conditions at the Premises or due to the inaccuracy of any information provided by Customer and relied upon by Supplier, the Contract Price, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Supplier. In such event, the Parties will negotiate such equitable adjustment in good faith.

(d) Nothing in this Agreement shall limit Customer's ability and obligation to maintain the Premises in a reasonable manner consistent with Customer's current and past practices; *provided, however*, that Customer shall be obligated to comply with Section 5.6 for maintenance that requires a Scheduled Outage. In the event that Customer's maintenance of the Premises prevents or limits deliveries of Energy Output to Customer, Customer shall pay all damages, costs and expenses arising in connection with such maintenance, including lost revenues under this Agreement and loss of Environmental Incentives. Customer acknowledges, agrees, and accepts that activities conducted by or on behalf of Supplier on the Premises relating to the System may interfere with Customer's maintenance of the Premises or Customer's conduct of business thereon. Supplier agrees to take all commercially reasonable measures to minimize such interference.

### Section 5.3 Required Approvals.

(a) Supplier shall be responsible for obtaining all Required Approvals, other than CEQA. Customer shall assist and cooperate with Supplier in obtaining and maintaining all Required Approvals.

(b) Supplier will be responsible for obtaining and paying for the permitting and implementation of any necessary storm water pollution prevention plan ("**SWPPP**") required during the initial permitting process, as well as for all other inspections, certifications, permits or approvals that may be required, excluding any approvals or exemptions required by CEQA, as applicable.

(c) Customer is responsible for hiring and paying inspectors (including special inspectors) required to obtain such Required Approvals. Supplier is responsible for paying fees associated with county plan checks (including expedited plan checks), permits, and certifications.

### Section 5.4 Interconnection.

(a) Supplier shall be responsible for applying for and obtaining interconnection agreements with the Utility, and for any changes to Customer's or Utility's equipment necessitated by the interconnection. Supplier shall bear all costs associated with the interconnection application for the System.

(b) Neither the Contract Price hereunder nor the EPC Contract includes the cost of addressing any changes to Customer's or Utility's equipment for interconnection of the PV System and the

BESS, that are not expressly provided for in the Scope of Work, with the exception of utility-required system telemetry which is explicitly acknowledged to be a known condition at the time of execution of this agreement and is included in the Contract Price. If the Utility requires any modification of the Scope of Work or any construction, improvement or renovation of the Customer's or Utility's equipment, which would materially increase the cost of installation of the System(s) affected, then the Parties will negotiate in good faith an equitable payment of such cost.

(c) Customer shall not make any material changes to the electrical equipment at the Premises after the date on which the applicable interconnection application is submitted unless such changes would not adversely affect the Utility's approval of such interconnection. Any changes to the electrical equipment at the Premises must be promptly reported to Supplier. Customer shall cooperate with Supplier in obtaining and maintaining the Utility interconnection agreements.

(d) Customer shall be responsible for arranging delivery of Energy Output from each Interconnection Point to Customer and any installation and operation of equipment on Customer's side of the Interconnection Points necessary for acceptance and use of the Energy Output.

Section 5.5 Emergencies. Each Party will notify the other within twenty-four (24) hours after the discovery of any material malfunction of the System or interruption in the supply of Energy from the System (a "**System Emergency**"). Supplier will correct, or cause to be corrected, the conditions that caused the System Emergency as soon as reasonably possible after the earlier of (i) receiving notice from the Customer or (ii) discovery of the System Emergency by Supplier. Customer shall not disconnect the System, and Supplier shall not have any obligation to disconnect the System, subject to the following sentence. In cases of emergency in which Customer determines that the continued operation of the System presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, Customer may disconnect the System from the Premises prior to notification of Supplier. Customer will notify Supplier within four (4) hours after the System is disconnected, and such disconnection shall be no longer than reasonably necessary to address the exigent circumstances that required such disconnection. Only Supplier or Supplier's representative will be authorized to reconnect the System.

Section 5.6 Scheduled Outages.

(a) Customer shall be permitted up to forty-eight (48) hours offline per site location per Contract Year (each such time period, a "**Scheduled Outage**"), during which Customer shall not be obligated to accept, and if not accepted, pay for, Energy Output; *provided, however*, that Customer shall have notified Supplier in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. "Hours offline" shall be understood to mean only those hours occurring during times of solar system production, which shall be defined as those hours between two hours after sunrise and two hours before sunset each day.

(b) Customer shall take all commercially reasonable measures to cause any Scheduled Outage to occur at a time earlier than 8:00 a.m. local time or later than 6:00 p.m. local time and not between April 1 and November 1 of any calendar year.

(c) In the event that Scheduled Outages at the Premises exceed forty-eight (48) hours per site location per Contract Year for a reason other than a Force Majeure event, and for all unscheduled outages, Supplier shall reasonably estimate the amount of Energy Output that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 12.2. The Parties agree that any outages resulting from actions of the applicable Utility pursuant to an interconnection agreement, or

otherwise, shall be considered events of Force Majeure and not be considered as unscheduled outages under this subsection.

Section 5.7 Upgrade of System. Supplier shall have the right but not the obligation, from time to time and at its own expense, to install upgrades or make other changes to the System so as to increase their efficiency or otherwise improve their operational characteristics.

Section 5.8 Prevailing Wages. This Agreement is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at Customer's main office or may be obtained online at <http://www.dir.ca.gov/dlsr>. Supplier shall post a copy of these rates at the Premises. Supplier and all contractors and subcontractor(s) performing work at the Premises shall comply with all applicable Labor Code provisions, which include, but are not limited to registration as a public works contractor, employment of apprentices, and the payment of not less than the required prevailing rates and overtime.

Section 5.9 Trenching. Pursuant to California Labor Code §6705, if the Project is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, Supplier will, in advance of excavation, submit to Customer and/or a registered civil or structural engineer, employed by Customer, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Customer or by the person to whom authority to accept has been delegated by Customer. Pursuant to California Labor Code §6705, nothing in this paragraph imposes tort liability on Customer or any of its employees.

Section 5.10 Hazardous Materials. Pursuant to California Public Contract Code §7104, if the Project is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Supplier will promptly, and before the following conditions are disturbed, notify Customer, in writing, of any (a) material that Supplier believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the Premises differing from those indicated by information about the site made available to Supplier before the Effective Date; or (c) unknown physical conditions at the Premises of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. Customer will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in Supplier's cost of, or the time required for, performance of any part of the Project will issue a change order under the procedures described in this Agreement. If a dispute arises between Customer and Supplier, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Supplier's cost of, or time required for, performance of any part of the Project, Supplier will not be excused from any scheduled completion date provided for by this Agreement but will proceed with all work to be performed under this Agreement. Supplier will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

**ARTICLE 6**  
**OWNERSHIP OF SYSTEMS; GOVERNMENTAL CHARGES**

Section 6.1 System Ownership.

(a) Notwithstanding the System's presence and operation on the Premises, except in the case of a sale-and-leaseback financing (in which case title to the System would transfer to the applicable Financing Party), Supplier shall at all times retain title to and be the legal and beneficial owner of the System and all alterations, additions or improvements thereto, and the System shall remain the property of Supplier or Supplier's assigns. In no event shall anyone claiming by, through or under Customer (including any present or future mortgagee of the Premises) have any rights in or to the System at any time. Customer acknowledges and agrees that Supplier may be required to grant, or cause to be granted, to its Financing Parties a security interest in the System. Customer expressly disclaims, waives and agrees, and shall cause each person with an interest in the Premises to disclaim, waive and agree for the benefit of Supplier, not to assert or permit any lien, security interest or any other rights it may have in the System, from time to time, pursuant to this Agreement, at law or in equity.

(b) Supplier and/or its Financing Parties shall be the owner of the System for federal income tax purposes and, as such, Supplier and/or its Financing Parties shall be entitled to all Tax Benefits and Environmental Incentives.

(c) Nothing in this Agreement shall be construed to convey to Customer a license or other right to trademarks, copyrights, technology, or other intellectual property of Supplier or associated with the System.

Section 6.2 System Loss.

(a) Supplier shall bear the risk of any System Loss excluding, however, any System Loss to the extent caused by the acts or failures to act of any Customer Person or their respective agents, representatives, customers, vendors, visitors, employees, contractors or invitees (collectively, "**Customer Misconduct**"). If any System Loss is caused partially by Customer Misconduct and partially by the acts or failures to act of others, including, but not limited to, Supplier, then Customer shall bear the risk of such System Loss only in proportion to its respective percentage of fault in such instance.

(b) In the event of any System Loss that, in the reasonable judgment of Supplier, results in less than total damage, destruction or loss of the System, this Agreement will remain in full force and effect and Supplier will, at Supplier's sole cost and expense, repair or replace the System as quickly as practicable; *provided, however*, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Term, Supplier shall not be required to restore the System, but may instead, in its sole discretion, terminate this Agreement with respect to the System upon notice to Customer. In that instance, Customer may, at its sole option, (i) require Supplier to remove the affected System from the Premises in accordance with Section 4.4; or (ii) take ownership of the affected System pursuant to ARTICLE 16, without further payment to Supplier therefor. Notwithstanding the foregoing, to the extent that such System Loss has been caused totally by Customer Misconduct, Customer shall, promptly upon demand from Supplier, pay all damages, costs and expenses arising in connection with such System Loss, including, without limitation, cost of repair, loss of any tax benefits (including ITC recapture and accelerated depreciation), lost revenues under this Agreement and loss of Environmental Incentives. Within thirty (30) days after written demand from Supplier, Customer shall pre-pay or post security acceptable to Supplier for any repair expenses reasonably estimated and agreed to by Supplier.

(c) In the event of any System Loss that, in the reasonable judgment of Supplier, results in total damage, destruction, or loss of the System, Supplier shall, within a reasonable time following the

occurrence of such System Loss, notify Customer whether Supplier will repair or replace the System or terminate this Agreement with respect to the System.

(i) In the event that Supplier notifies Customer that it will terminate this Agreement, in whole or in part, such notice shall include the date of termination and Supplier shall promptly remove the effected System from the Premises in accordance with Section 4.4.

(ii) In the event that Supplier notifies Customer that Supplier will repair or replace the System, this Agreement will remain in full force and effect with respect to the System and Supplier will repair or replace the System as quickly as practicable.

(iii) To the extent System Loss has been caused by Customer Misconduct, Customer shall, promptly upon demand from Supplier, pay all damages, costs and expenses arising in connection with such System Loss, including, without limitation, cost of repair, loss of any tax benefits (including ITC recapture and accelerated depreciation), lost revenues under this Agreement and loss of Environmental Incentives. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 5.6(c). Within thirty (30) after written demand from Supplier, Customer shall pre-pay or post security acceptable to Supplier for any repair expenses reasonably estimated by Supplier.

(iv) If such System Loss has been caused partially by Customer Misconduct and partially by acts or failures to act of others, including but not limited to, Supplier, then Customer shall, promptly upon demand from Supplier, pay all damages, costs and expenses arising in connection with such System Loss, including, without limitation, cost of repair, loss of any tax benefits (including ITC recapture and accelerated depreciation), lost revenues under this Agreement and loss of Environmental Incentives, but only in proportion to Customer's percentage of fault in the matter. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 5.6(c). Within thirty (30) days after written demand from Supplier, Customer shall pre-pay or post security acceptable to Supplier for any repair expenses reasonably estimated by Supplier.

(d) Permanent Shutdown. If the System is shut down permanently due to cessation of Customer's operations, Customer's vacating the Premises, renovation, damage, destruction or closure of all or a portion of the Premises, or for any other cause totally attributable to Customer, then Supplier may terminate this Agreement and Customer shall, promptly upon demand from Supplier, pay all damages, costs and expenses arising in connection with such permanent shutdown, including, without limitation, cost of removal, loss of any tax benefits (including ITC recapture and accelerated depreciation), lost revenues under this Agreement and loss of Environmental Incentives. If the causes of such permanent shutdown are only partially attributable to Customer, then Customer's maximum liability under this subsection (d) shall be in proportion to Customer's percentage of fault in the matter.

### Section 6.3 Governmental Charges.

(a) Supplier shall be responsible for local, state, and federal income taxes attributable to Supplier for income received under this Agreement.

(b) Customer shall be responsible for all Governmental Charges attributable to (i) the sale of the Energy Output from Supplier to Customer customarily charged by the electric utility serving Customer or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of the Energy Output to Customer at the Interconnection Points and (ii) the ownership of the Premises where the System is installed. Customer shall promptly reimburse Supplier for any such Governmental Charges that are assessed to and paid by Supplier.

(c) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Output hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES; COVENANTS**

Section 7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) 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 are within its corporate power and authority, have been duly authorized by all necessary corporate, partnership or limited liability action, as applicable, and do not violate any of the terms and conditions of such Party's governing documents, any contracts to which such Party is a party, or any Applicable Law;

(b) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against such Party in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) such Party is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) such Party is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(e) such Party understands that the other Party is not acting as a fiduciary for or as an adviser to it or its Affiliates;

(f) except as previously disclosed in writing to the other Party, there is no pending or, to the knowledge of such Party, threatened litigation, action or proceeding against such Party which could reasonably be expected to have a material adverse effect on such Party or its ability to perform its obligations under this Agreement or the Site Lease or which purports to affect the legality, validity or enforceability of this Agreement or the transactions contemplated hereby;

(g) except as previously disclosed in writing to the other Party, there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to such Party;

(h) such Party is not a "foreign person" within the meaning of section 168(h) of the Code, and such Party will not assign or otherwise transfer its rights under this Agreement to any such "foreign person"; and

(i) the Parties intend for this Agreement to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Code.

Section 7.2 Additional Representations, Warranties, and Covenants of Customer. Customer represents and warrants that:

(a) to the best of Customer's knowledge there are no facts, circumstances or other matters that may interfere with or delay the design, permitting, construction, installation, testing, operation or maintenance of the System;

(b) all information provided by Customer to Supplier, as it pertains to the Premises and the physical configuration of Customer's facilities at the Premises, is accurate in all material respects; and

(c) Customer is not 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.

Section 7.3 Additional Representations, Warranties, and Covenants of Supplier. Supplier represents and warrants that, in compliance with NEM 2.0 interconnection requirements:

(a) the major solar components (PV modules and inverters) of the System are on the verified equipment list maintained by the California Energy Commission;

(b) other equipment has safety certification from a national recognized testing laboratory, to the extent required by the Utility;

(c) a manufacturer's warranty of at least ten (10) years has been provided with the major solar components; and

(d) a manufacturer's warranty of at least ten (10) years has been provided with the major BESS components.

Section 7.4 Supplier's Covenants. Supplier covenants and agrees to the following:

(a) Health and Safety, Legal Requirements. Supplier will take all necessary and reasonable safety precautions with respect to all work in connection with the installation, operation, and maintenance of the System and will comply with all Applicable Laws pertaining to the health and safety of persons, the environment, and real and personal property.

(b) Movement of System. Supplier will cooperate with Customer to effectuate moving any part of the System for Customer's maintenance, inspection or repair of Customer's Premises where the System is installed; *provided* that if Customer moves any part of the System for such purpose it shall be at Customer's sole cost and expense.

Section 7.5 Customer's Covenants. Customer covenants and agrees as follows:

(a) Interference with System.

(i) Customer acknowledges and agrees that access to sunlight ("**Insolation**") is essential to the System's operation. Accordingly, Customer shall not permit any interference with Insolation on and at the Premises. Without limiting the generality of the foregoing, Customer shall not construct or permit to be constructed any structure on the Premises, permit the growth of foliage on the Premises, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other airborne matter on the Premises, in each case that could adversely affect Insolation of the System. Supplier shall be entitled to an equitable adjustment of the Contract Price for any breach by Customer of this Section 7.5(a)(i).

(ii) If a Change in Law occurs, or if Customer becomes aware of any potential development or other activity on adjacent or nearby properties that could result in diminishing the Insolation

to the Premises, Customer shall advise Supplier of such information and reasonably cooperate with Supplier in measures to preserve existing levels of Insolation at the Premises. To the extent any filings, notices or other arrangements are available pursuant to Applicable Law for the purpose of protecting the Insolation of the System, Customer will cooperate with Supplier in preparing and filing any necessary documentation related thereto, and in reasonably and commensurately adjusting the amounts payable by Customer for Energy Output.

(b) Health and Safety, Legal Requirements. Customer will at all times maintain the Premises consistent with all Applicable Laws pertaining to the health of safety of persons, the environment, and real and personal property.

(c) Security. Customer will take all necessary actions to ensure that the System is secure, including monitoring the Premises so as to ensure that the System is not vandalized or impermissibly altered.

(d) Maintenance. Except for the repair and maintenance of the System (which shall be performed by Supplier in accordance with this Agreement), Customer will at all times maintain and repair the part of the Premises upon which the System is installed.

(e) Notice of Damage. Customer will promptly notify Supplier of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

(f) Environmental Incentives. Customer will not take any actions that materially impair the value to Supplier of any Environmental Incentives, or Tax Benefits. Supplier will not take any actions that materially impair the value to Customer of any Environmental Attributes.

## **ARTICLE 8 DEFAULT**

Section 8.1 Supplier Default. The following events will be defaults with respect to Supplier (each a "**Supplier Default**"):

(a) Supplier commences or acquiesces to a bankruptcy proceeding, or an involuntary bankruptcy proceeding is commenced against Supplier that remains undismissed for a period of sixty (60) days;

(b) Supplier fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) days after receipt of written notice from Customer;

(c) Any representation or warranty made by Supplier in this Agreement is false or misleading in any material respect when made or when repeated if such breach is not cured or remedied (including by payment of money to Customer) within thirty (30) days after receipt of written notice from Customer;

(d) Supplier fails to pay when due any payment required under this Agreement, other than an amount that is the subject of a good-faith dispute, if such failure is not remedied within thirty (30) days after receipt of written notice from Customer;

(e) Supplier defaults as lessee under the Site Lease, which default remains uncured beyond any applicable notice and cure period therein; or

(f) Supplier fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within thirty (30) days after receipt of written notice from Customer.



Section 8.2 Customer Default. The following events will be defaults with respect to Customer (each a “**Customer Default**”):

(a) Customer commences or acquiesces to a bankruptcy proceeding, or an involuntary bankruptcy proceeding is commenced against Customer that remains undismissed for a period of sixty (60) days;

(b) Customer fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) days after receipt of written notice from Supplier;

(c) Any representation or warranty made by Customer in this Agreement is false or misleading in any material respect when made or when repeated if such breach is not cured or remedied (including by payment of money to Supplier) within thirty (30) days after receipt of written notice from Supplier;

(d) Customer fails to pay when due any payment required under this Agreement, other than an amount that is the subject of a good-faith dispute, if such failure is not remedied within thirty (30) days after receipt of written notice from Supplier;

(e) Customer fails to sign authorizations needed to obtain any Environmental Incentives or Tax Benefits contemplated in this Agreement, *provided* that Customer is afforded thirty (30) days to cure such default;

(f) Customer fails to sign or breaches any term of any interconnection agreement requirement by the Utility for interconnection of the System, *provided* that Customer is afforded thirty (30) days to cure such default;

(g) Customer defaults as lessor under the Site Lease, which default remains uncured beyond any applicable notice and cure period therein; or

(h) Customer fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within thirty (30) days after receipt of written notice from Supplier.

Section 8.3 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the non-defaulting Party may do any of the following (a) pursue applicable remedies or damages at law or equity, (b) suspend performance under this Agreement, or (c) with notice to the defaulting Party, terminate this Agreement (the date of such notice, an “**Early Termination Date**”). In the event an Early Termination Date notice is provided, the non-defaulting Party shall have the right as of the date of such notice to withhold any payments due to the defaulting Party under this Agreement (other than payments owed for any period prior to such date). In all cases, (a) the non-defaulting Party is obligated to take all commercially reasonable efforts to mitigate its damages as the result of an Event of Default; and (b) if the nature of the Event of Default is such that it cannot reasonably be cured within the time period allowed hereunder, then the defaulting Party shall not be considered to be in default if it begins the actions necessary to cure the Event of Default within such time period and diligently pursues and completes such cure to the non-defaulting Party’s reasonable satisfaction within a reasonable time thereafter.

Section 8.4 Customer Rights upon Termination for Default. If a Supplier Event of Default has occurred and is continuing, and Customer elects to terminate this Agreement as provided in Section 8.3, Customer shall be entitled, at its sole discretion, to (a) require Supplier to remove the System as provided in Section 4.4, or (b) if such Supplier Event of Default occurs after the sixth (6th) anniversary of the Commercial Operation Date, exercise the Purchase Option provided in ARTICLE 16; or (c) require the Supplier to pay a termination fee to Customer equal to the sum of (i) the value of the excess, if any, of the Shortfall Rate over the Contract Price for the Expected Energy Production of the System for one (1) year from the date

of the Supplier Default, which, for purposes of this Section 8.4(c)(i), shall also include the default of Supplier's Financing Party under this Agreement ; (ii) any removal costs incurred by Customer for the System; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Supplier to Customer. No Termination Payment shall be owed if less than zero. In the event that Customer elects any of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Customer as a result of termination of this Agreement, subject, however, to Section 8.9. Supplier's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are hereby waived by Customer.

Section 8.5 Supplier Rights upon Termination for Default. If a Customer Event of Default has occurred and is continuing, and Supplier elects to terminate this Agreement as provided in Section 8.3, (a) Customer shall, promptly upon demand from Supplier, pay all damages, costs and expenses arising in connection with such termination, including, without limitation, loss of any tax benefits (including ITC recapture and accelerated depreciation), lost revenues under this Agreement and loss of Environmental Incentives, provided that Supplier has given Customer not less than thirty (30) days' prior written notice of the amount of such damages, costs, and expenses before Supplier terminates this Agreement; or (b) Supplier shall be entitled to remove the System from the Premises at Customer's expense. In the event Supplier elects any of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Supplier as a result of termination of this Agreement, subject, however, to Section 8.9. Customer's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are hereby waived by Supplier.

Section 8.6 Payment Due Notice. In the event that a defaulting Party is required to make a payment to the non-defaulting Party pursuant to Section 8.4 or Section 8.5, then the non-defaulting Party shall notify the defaulting Party of the amount of such payment and any amount otherwise due and outstanding under this Agreement or the Site Lease. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. The defaulting Party shall be required to make such payment and any amount otherwise due and outstanding under this Agreement or the Site Lease to the non-defaulting Party thirty (30) days after the receipt of such notice.

Section 8.7 Closeout Setoffs. Upon the occurrence of an Event of Default, the non-defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing to the defaulting Party any amounts due and owing by the defaulting Party to the non-defaulting Party under this Agreement or the Site Lease.

Section 8.8 Remedies Cumulative. Except as provided in Section 8.4 and Section 8.5, the rights and remedies contained in this ARTICLE 8 are cumulative with the other rights and remedies available under this Agreement or at law or in equity. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement.

Section 8.9 Unpaid Obligations. Notwithstanding anything to the contrary herein, the defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 9 FORCE MAJEURE**

Section 9.1 Effect of Excusable Events. Neither Party will be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or

failure is attributable to an Excusable Event, *provided* that the Party claiming relief as a result of an Excusable Event: (i) provides prompt written notice; (ii) exercises all reasonable efforts to mitigate the effects of the Excusable Event; and (iii) resumes performance of its obligations hereunder as soon as practicable thereafter.

Section 9.2 Extended Material Force Majeure. If an event of a Force Majeure prevents, in whole or in material part, the performance of Supplier for a period of one hundred eighty (180) days or longer and such Force Majeure event has a material adverse effect on the System as a whole (an “**Extended Material Force Majeure**”), then either Party may, upon thirty (30) days’ notice, terminate this Agreement without further liability; *provided, however* that Supplier shall be granted additional time after such 180-day period as reasonably necessary to cure any reconstruction-related delays.

## **ARTICLE 10 CHANGE IN LAW**

Section 10.1 Change in Law. The Contract Price is based on assumptions related to the availability to Supplier of the Environmental Incentives and Tax Benefits, and on Supplier’s exemption from regulation as a public utility or a public utility holding company. In the event of the elimination or alteration of one or more Environmental Incentives or Tax Benefits, or any other Change in Law that directly or indirectly results in a material adverse economic impact on Supplier in respect of this Agreement (including due to a Law that increases Supplier’s cost of compliance with this Agreement), the Parties shall work in good faith to amend the provisions of this Agreement within thirty (30) days after such elimination or alteration, as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated by this Agreement as of the Effective Date. If the Parties cannot agree on such amendment within such thirty (30) day period, then Supplier shall have the right (but not the obligation) to terminate this Agreement pursuant to Section 4.2(d). Customer and Supplier agree that the imposition of trade tariffs or equivalent surcharges or duties on imported steel and/or solar modules, and any costs thereof, are not a “Change in Law” or a “Governmental Charge” within the meaning of this Agreement.

## **ARTICLE 11 ASSIGNMENT & FINANCING**

Section 11.1 Assignment.

(a) The duties and obligations of the Parties in this Agreement may be assigned by either Party only with the written approval of the other Party, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Supplier may upon written notice, without the need for consent from Customer, (i) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Supplier; *provided, however*, that any such assignee shall agree to be bound by the terms and conditions hereof; or (ii) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; *provided, however*, that any such assignee shall agree to be bound by the terms and conditions hereof. No such assignment shall be effective until written notice of such assignment is provided to Customer.

(b) Customer’s consent to any other assignment shall not be unreasonably withheld if Customer has been provided with reasonable proof that the proposed assignee: (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System; and (y) has the financial capability to operate and maintain the System in the manner required by this Agreement. Any such assignee of this Agreement shall assume in writing, in form and content reasonably satisfactory

to Customer, the due performance of all Supplier's obligations under this Agreement, including any accrued obligations at the time of the assignment. A copy of the assignment agreement, fully executed and acknowledged by the assignee, shall be sent to Customer not less than thirty (30) days before the effective date of such assignment.

(c) For the purposes of this Section 11.1, the following shall not be deemed an assignment of this Agreement: any (i) sale, assignment, transfer or disposition of the System, directly or indirectly, to an affiliate of Supplier, *provided, however*, that any such affiliate shall agree to be bound by the terms and conditions hereof, or (ii) transaction which results in a change of control of Supplier. Change of control shall be defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of Supplier.

Section 11.2 Financing. Customer acknowledges and agrees that Supplier may finance the acquisition and installation of the System through a loan, lease, or partnership from or with one or more third parties and that Supplier's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. To facilitate any such transaction, Customer (a) consents to the collateral or full assignment by Supplier to its Financing Parties of the Supplier's right, title and interest in and to this Agreement and the System, (b) agrees to take any reasonable actions and provide any documentation reasonably requested by Supplier in connection with such a transaction (including any reasonable consent agreements requested by Financing Parties, which may include customary lender protections, such as extended cure rights), and (c) will use commercially reasonable efforts to place its successors and assigns on notice of Supplier's ownership of the System, the existence of the security interest, and the fact that the System are not part of the Premises or fixtures thereof, as necessary and appropriate to avoid confusion or adverse claims.

## **ARTICLE 12 METERING & BILLING**

Section 12.1 System Meter. Supplier will install and maintain a commercially available revenue grade interval data-recording meter, meeting the reporting requirements of the Western Renewable Energy Generation Information System ("**Meter**"), for measuring the quantity of Energy provided by the PV System. Supplier shall maintain all interval metering data, and shall provide Customer a report of the PV System's metered energy, as read and collected on a monthly basis. Supplier shall also monitor the performance of the BESS using equipment and software installed as part of the BESS. Should either Party believe that the Meter is inaccurate, such Party shall immediately notify the other Party, and the Supplier shall have such Meter tested by an independent, third party. If such test reveals that such Meter is inaccurate by more than two percent (2%), then the Supplier invoices shall be adjusted for the period in which the inaccurate measurements were made. Should such period of inaccuracy be unknown, then the invoices covering the period of time since the time of the last Meter test shall be adjusted for the amount of the inaccuracy, on the assumption that the inaccuracy persisted during one-half (½) of such period, but in no event more than one (1) year. If metering error is less than two percent (2%), such Meter shall be deemed accurate and no invoices shall be adjusted. If a Meter is out of service or is discovered to be inaccurate pursuant to this Section 12.1, Supplier shall determine measurements of Energy Output from the PV System and monitor the performance of the BESS in a commercially reasonable manner by reference to quantities of Energy Output from the PV System measured during periods of similar conditions when such Meter was registering accurately. If no reliable information exists as to the period of time during which such Meter was registering inaccurately, it shall be assumed that the period of such inaccuracy was equal to one-half (½) of the period from the date of the last previous test of such Meter (or if no

such test had been conducted, from the Commercial Operation Date) through the date the inaccuracy of such Meter has been discovered. If, for calculation purposes, no time period of similar conditions, during which the Meter registered accurately, can be determined, measurements of Energy Output from the PV System shall be calculated in good faith by Supplier with reference to applicable solar production modeling and solar insolation data generally accepted in the solar industry. At Customer's request, any calculations performed under this section shall be subject to review and verification by a third-party of Customer's choosing, and Customer and Supplier shall equally share the cost of such review and verification.

Section 12.2 Payment. Supplier will deliver or cause to be delivered to Customer a single invoice (on a form mutually acceptable to Supplier and Customer) for the Energy Output produced by the PV System and the Energy Storage Services provided by Supplier from the BESS by the tenth (10<sup>th</sup>) day of each calendar month (or upon a monthly schedule reasonably acceptable to Customer and Supplier) for the amount then due for the preceding calendar month. Customer shall pay the invoiced amount on or before thirty (30) days following the date of the invoice, which shall be referred to as the "**Due Date**." If the Due Date is not a Business Day, payment shall be due on the following Business Day. Supplier's obligation to deliver invoices and Customer's obligation to make payment shall commence for the first calendar month after the calendar month in which the Commercial Operation Date occurs.

Section 12.3 Netting and Setoff. The Parties will net any and all mutual debts and payment obligations that are due and owing under this Agreement or the Site Lease. Accordingly, unless otherwise agreed by the Parties, all amounts owed by one Party to the other Party under this Agreement or the Site Lease, including any related damages and any applicable interest, payments or credits, will be netted such that only the excess amount remaining due will be paid by the Party that owes it. Each Party shall have the right to set off any undisputed amount due and owing to such Party from the other Party under this Agreement or the Site Lease against any undisputed amount due and owing from such Party to the other Party under this Agreement or the Site Lease.

## **ARTICLE 13 INDEMNITY**

Section 13.1 Indemnity. Each Party agrees that it will indemnify, defend and hold harmless the other, the others representatives, employees, agents, officers, directors, shareholders, members, contractors and subcontractors, and their respective successors and permitted assigns ("**Indemnified Parties**"), from and against any and all claims, suits, penalties, obligations, losses, payments, liabilities, causes of action, costs, damages, and expenses ("**Losses**") (including, without limitation, the actual or alleged injury to or death of any person or loss or damage to property of any person (including property of the Indemnified Parties)), to the extent arising out of the negligence or wrongful actions or inactions of the indemnifying Party or that of its representatives, employees, agents, officers, directors, shareholders, members, contractors and subcontractors, and/or their successors or assigns ("**Indemnifying Parties**"). In no event, however, will the Indemnifying Parties be required to reimburse or indemnify any of the Indemnified Parties to the extent such Losses are due to the negligence or wrongful actions or inactions of the Indemnified Parties. In addition, Customer shall indemnify, defend and hold harmless Supplier, Supplier's representatives, employees, agents, officers, directors, shareholders, members, contractors and subcontractors, and their respective successors and permitted assigns from and against any Losses related to any and all Environmental Conditions, except to extent that the same are caused by the negligence or wrongful actions or inactions of Supplier, Supplier's representatives, employees, agents, officers, directors, shareholders, members, contractors and subcontractors, and their respective successors and permitted

assigns. If it is finally adjudicated that a Loss was caused by the comparative negligence or wrongful actions or inactions of the Parties, then the Parties' indemnification obligations hereunder shall be reduced in proportion to the established comparative liability of the Parties in that instance.

## **ARTICLE 14 INSURANCE**

Section 14.1 Supplier's Insurance. Supplier shall maintain the following insurance coverages in full force and effect throughout the Term: (a) workers' compensation insurance at the statutory limits, and employer's liability insurance with coverage of \$1,000,000; (b) automobile liability coverage of \$1,000,000 combined single limit per occurrence covering owned, hired, and non-owned vehicles; (c) commercial general liability insurance with limits of \$2,000,000 per occurrence for property damage and injury to or death of one or more persons, and with an aggregate limit of \$5,000,000; (d) contractor's pollution coverage with a single combined limit of \$5,000,000; (e) umbrella policy of \$5,000,000; (f) builder's risk / installation floater insurance in an amount sufficient to protect Supplier's property, materials, tools, and other financial interests in the Project; and (g) property and casualty insurance for the System providing coverage in an amount not less than the replacement cost of the System. Supplier shall also obtain professional liability insurance with coverage of \$2,000,000 for errors and omissions as appropriate to the profession of an engineer designing photovoltaic systems, with coverage to continue through the Commercial Operation Date plus two (2) years thereafter. Supplier's insurance shall equal or exceed an A-:VIII rating as listed in Best's Insurance Guide's latest edition.

Section 14.2 Customer's Insurance. Customer shall maintain the following insurance coverages in full force and effect throughout the Term: (a) workers' compensation insurance at the statutory limits, and employer's liability insurance with coverage of \$1,000,000; (b) commercial general liability insurance with limits of \$1,000,000 per occurrence for property damage and injury to or death of one or more persons, and with an aggregate limit of \$2,000,000; and (c) property and casualty insurance for the System providing coverage for the Customer's liability pursuant to Section 6.2(b), Section 6.2(c) or Section 6.2(d), in an amount not less than the replacement cost of the System. Customer's insurance shall equal or exceed an A-:VIII rating as listed in Best's Insurance Guide's latest edition. Customer may satisfy the requirements of this Section 14.2 with its customary program of self-insurance and excess-insurance coverage.

Each Party shall name the other Party as an additional insured under their respective liability insurance policies. At the request of a Party, the other Party shall provide certificates of insurance and copies of applicable policy endorsements to the requesting Party. Supplier shall have such coverages in place prior to conducting any work on Customer's Premises.

Section 14.3 The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 14 or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Parties and their respective property damage insurers also waive all rights of subrogation against the other Party, its directors, officers, agents and employees. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**ARTICLE 15**  
**LIMITATION OF LIABILITY / WARRANTIES**

Section 15.1 LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, SUPPLIER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE REVENUE FOR THE EXPECTED SALE OF ENERGY OUTPUT FROM THE PV SYSTEM FOR THE CONTRACT YEAR CORRESPONDING TO THE YEAR IN WHICH CUSTOMER INITIALLY CLAIMS DAMAGES.

Section 15.2 EXCLUSION OF WARRANTIES. THE INSTALLATION, OPERATIONS, AND ENERGY OUTPUT PROVIDED BY SUPPLIER TO CUSTOMER PURSUANT TO THIS AGREEMENT WILL BE "AS-IS, "WHERE-IS." EXCEPT AS EXPRESSLY PROVIDED HEREIN, SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES, AND ALL OTHER WARRANTIES, IMPLIED OR EXPRESSED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

**ARTICLE 16**  
**PURCHASE OPTION**

Section 16.1 Grant of Purchase Option. On the tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>), twentieth (20<sup>th</sup>) and twenty fifth (25<sup>th</sup>) anniversaries of the Final Commercial Operation Date (unless such anniversary does not fall on a Business Day, in which case the Purchase Option may be exercised on the first Business Day following such anniversary) and upon expiration of the Term or termination of this Agreement pursuant to Supplier Default under ARTICLE 8, and provided that no Customer Event of Default has occurred and is then continuing, Customer shall have the option to purchase all, but not less than all, of Supplier's right, title and interest in and to the System Assets on the terms set forth in this Agreement (the "**Purchase Option**"). Customer shall furnish written notice to Supplier of its interest to purchase the System Assets not more than nine (9) months and not less than six (6) months prior to (i) the relevant anniversary of the Final Commercial Operation Date, or (ii) the expiration of the Term, as applicable. The Purchase Option may be exercised by Customer during the Exercise Period (as defined below) following a Final Determination (as defined below) related to a valuation performed pursuant to this ARTICLE 16.

Section 16.2 Customer Request for Determination of System Value.

(a) Customer shall have the right to provide a notice to Supplier requiring a determination of the Fair Market Value of the System Assets in accordance with Section 16.4, (i) at any time within the periods set forth in Section 16.1 or (ii) in the notice under Section 8.3 following a Supplier Event of Default (subject to Section 8.4).

(b) Promptly following receipt of Customer's notice pursuant to Section 16.2(a), Supplier shall make the System Assets, including records relating to the operations, maintenance, and warranty repairs, available to Customer for its inspection during normal business hours, and Supplier shall provide Customer with Supplier's appraisal of the Fair Market Value of the System Assets, which appraisal shall be based on Supplier's knowledge of the distributed generation solar power industry.

(c) Customer may, but is not obligated to, accept Supplier's appraisal. If Customer does not accept such appraisal within ten (10) days of receiving the appraisal from Supplier, but Customer nevertheless wishes to proceed with the purchase of the System Assets, the Parties shall meet to discuss the

appraisal. If they are unable to reach agreement within thirty (30) days of Customer's receipt of the appraisal from Supplier, then the Parties shall mutually select a nationally recognized Independent Appraiser with experience and expertise in the distributed generation solar power industry.

Section 16.3 Selection of Independent Appraiser. If Supplier and Customer do not agree upon the appointment of an Independent Appraiser within thirty (30) days, then at the end of such thirty (30) day period Supplier and Customer shall notify each other in writing of their respective designation of three proposed Independent Appraisers. Supplier and Customer shall, within ten (10) days of receipt of such notice, strike two of the proposed Independent Appraisers designated by each of Supplier and Customer, respectively, and shall provide notice thereof to the other Party. The remaining two proposed Independent Appraisers shall, within ten (10) days of each Party's notice, select one of themselves to perform the valuation and provide notice thereof to Supplier and Customer, *provided* that if either Supplier or Customer still objects to the valuation being performed by such selected Independent Appraiser, then, within five (5) days of the selection notice, such two proposed Independent Appraisers shall select a third Independent Appraiser (who may not be one of the Independent Appraisers originally designated by the parties or another Independent Appraiser) and such third Independent Appraiser shall perform the duties of the Independent Appraiser as set forth herein. Such selection shall be final and binding on Supplier and Customer.

Section 16.4 Determination of Fair Market Value.

(a) The Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Fair Market Value of the System Assets (the "**Preliminary Determination**").

(b) Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Supplier and Customer, together with all supporting documentation that details the calculation of the Preliminary Determination. Supplier and Customer shall have the right to object to the Preliminary Determination within thirty (30) days of receiving such Preliminary Determination; *provided* that the objecting Party provides a written explanation documenting the reasons for its objection. Within fourteen (14) days after the expiration of such thirty (30) day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the "**Final Determination**") to Supplier and Customer, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

Section 16.5 Calculation of Purchase Price. The purchase price (the "**Purchase Price**") payable by Customer for the System Assets shall be equal to the greater of (i) the applicable Buyout Amount as of the date of the Final Determination and Fair Market Value as determined by the process described above.

Section 16.6 Costs and Expenses of Independent Appraiser. Supplier and Customer shall each be responsible for payment of one-half (½) of the costs and expenses of any Independent Appraiser.

Section 16.7 Exercise of Purchase Option. Customer shall have thirty (30) days from the date of the Final Determination (such period, the "**Exercise Period**"), to exercise the Purchase Option, at the Purchase Price by providing notice thereof (an "**Exercise Notice**") to Supplier. Once Customer delivers its Exercise Notice to Supplier, such notice shall be irrevocable.

Section 16.8 Terms of System Purchase. On the Transfer Date (as defined below), (a) Supplier shall surrender and transfer to Customer on an as-is, where-is basis all of Supplier's right, title and interest in and to all System Assets and shall retain all liabilities arising from or related to the System Assets prior to the Transfer Date, (b) Customer shall pay the Purchase Price, by certified check, bank draft or wire transfer



and shall assume all liabilities arising from or related to the System Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System Assets in Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System Assets to Customer. Customer shall be responsible for the payment of all Governmental Charges in connection with the purchase and sale of the System Assets.

Section 16.9 Transfer Date. The closing of any sale of the System (the “**Transfer Date**”) pursuant to this ARTICLE 16 will occur no later than thirty (30) days from the date of delivery of the Exercise Notice to Supplier. The Term of this Agreement shall end on the Transfer Date.

## **ARTICLE 17 MISCELLANEOUS**

Section 17.1 Notices. All notices, communications and waivers under this Agreement shall be in writing and shall be delivered (a) in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by reputable overnight express courier, in each case to the persons at the addresses below, or to any other address that the receiving Party designates in writing:

If to Supplier:

California Solar 1, LLC  
% ENGIE Resources  
1990 Post Oak Boulevard, Suite 1900  
Houston, TX 77056  
ATTN: General Counsel

If to Customer:

County of Tulare  
2800 W. Burrel Ave  
Visalia, CA 93291  
Attention County Administrative Officer

Notices shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight express courier, then on the next Business Day immediately following the day sent, (iii) if sent by registered or certified mail, then on the earlier of the third (3<sup>rd</sup>) Business Day after the day sent, or, if earlier, when actually received.

Section 17.2 Integration; Exhibits. This Agreement, together with the Exhibits attached hereto, and the Site Leases constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter hereof, which are of no further force or effect. In the event of discrepancy or ambiguity between or among the Agreement, its Exhibits, and the Site Leases, the following order of precedence shall be used:

- (a) the plans approved by the authority having jurisdiction;

(b) Amendments and change orders to the Agreement, the Site Lease or the Exhibits, in inverse chronological order (i.e., most recent first) and in the same order as the documents they are modifying;

(c) this Agreement;

(d) the Site Leases; and

(e) the Exhibits.

Section 17.3 Industry Standards. Except as otherwise described herein, for the purposes of this Agreement, the normal standards of performance within the solar photovoltaic distributed power generation industry in the relevant market will be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings will be so construed.

Section 17.4 Cumulative Remedies. Except as stated to the contrary herein, any right or remedy of Supplier or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

Section 17.5 Limited Effect of Waiver. The failure of Supplier or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, will not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance of any other provision in any instance.

Section 17.6 Governing Law; Jurisdiction; Disputes and Dispute Resolution.

(a) This Agreement is entered into under and shall be construed in accordance with and governed by the laws of the State of California, without giving effect to conflict of laws principles.

(b) Each Party shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

Section 17.7 Severability. If any term, covenant or condition in this Agreement is found, to any extent, to be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected, and the rest of the Agreement will be valid and enforceable to the fullest extent permitted by law and, if appropriate, such invalid or unenforceable provision will be modified or replaced to give effect to the underlying intention of the Parties and to the intended economic benefit of the Parties.

Section 17.8 Successors and Assigns. This Agreement and the rights and obligations hereunder are binding upon and will inure to the benefit of Supplier and Customer and their respective successor and permitted assigns.

Section 17.9 Counterparts; Imaged Agreements. This Agreement may be executed and delivered (including by facsimile transmission or portable document format) in one or more counterparts, all of which

shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Any original executed Agreement, confirmation or other related document may be photocopied and stored on computer tapes and disks (the "**Imaged Agreement**"). The Imaged Agreement, if introduced as evidence on paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form.

Section 17.10 Estoppels. Either Party, without charge, at any time and from time to time and within seven (7) days after receipt of a written request by the other Party, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party; (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

*[Signatures on the following page]*

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

CALIFORNIA SOLAR 1, LLC

COUNTY OF TULARE

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

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

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

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

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

Name: Kuyler Crocker

Title: Chairman, Board of Supervisors

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

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

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

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

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

ATTEST: JASON T. BRITT

County Administrative Officer/Clerk of the Board of Supervisors of the County of Tulare

By \_\_\_\_\_

Deputy Clerk

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

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract.

Approved as to Form  
County Counsel

By \_\_\_\_\_

Deputy

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

Matter # 20171102

List of Attached Exhibits:

- Exhibit A = Scope of Work, including Attachment 1 – Customer’s General Project Technical Specifications
- Exhibit B = Contract Price
- Exhibit C = Expected Energy Output
- Exhibit D = Expected Annual Global Irradiation
- Exhibit E = Buyout Amount
- Exhibit F = Defined Terms
- Exhibit G = Rules of Interpretation
- Exhibit H = Site Lease

**EXHIBIT A  
SCOPE OF WORK**

Supplier will cause EPC Contractor to design, engineer, and install photovoltaic power generating system (PV System) and battery energy storage systems(BESS) at the Premises as provided in the table below:

Solar Generating Facilities and Energy Storage Systems to be Installed

Description
Solar Photovoltaic Carport Installation at Tulare Akers Professional Center

Facility	Address	Approximate System Size (kW DC)
Tulare Akers Professional Center	5300 W. Tulare Ave., Visalia, CA 93277	1,123.2

**ECM RE-02: Tulare Akers Professional Center**

EPC Contractor will design-build a carport photovoltaic system located in the Tulare Akers Professional Center parking lot. The system size noted in the table above is approximate and may be adjusted during final engineering. The array will not be waterproof. Directional boring may be used to run conduit below grade between arrays, the inverter, and the point of utility connection. The precise quantity of free standing structures will be determined in final engineering and Tulare County plan check review and approval. Asphalt and concrete patch will be provided where existing hardscape was removed or damaged by EPC Contractor during construction. The structure will be painted with one coat of Rust Inhibitive Primer and one coat of Alkyd Enamel or Water Based Top Coat; colors to be chosen by Customer. LED under-canopy light fixtures will be provided to maintain existing light levels. A preliminary layout of the solar project is given below.



## Battery Energy Storage Installation

EPC Contractor will install a battery storage system to provide:

- Interconnection of the battery storage system at the site listed below. Install energy storage modules and prepare for online interconnection. Anticipate one four (4) hour shut down per facility.
- The energy storage modules will be installed in either indoor or outdoor locations pending final design drawings.
- System footprint varies with location requirements.

Site Name	System Size kW	Module Quantity
B-01: Tulare Akers Professional Center	500	1

**General Energy Storage System Note:** System size and quantities shown above may vary during final design.

The scope of work includes the following:

- Complete final engineering and prepare plans and specification.
- Provide equipment submittal for approval by Customer.
- Pour concrete pad for new equipment.
- Provide lockable panels to secure battery components.
- Safe off and disconnect existing feeders.
- Furnish and install new energy storage systems with required clearances.
- Reconnect and modify as necessary.
- Properly start-up and commission new energy storage devices.

### General Project Exclusions and Clarifications:

- Customer and Supplier will be responsible for obtaining and paying for inspections and any required Building, Mechanical, and Electrical Permits, and for hiring and paying all inspectors, including special inspectors, in accordance with Section 5.3 of the Agreement.
- ADA, Fire Life Safety, and other work required as a result of Tulare County plan-check submission are excluded, except as noted below.
- EPC Contractor has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by Customer at no cost to EPC Contractor (including, without limitation, trailer power, phone lines, and construction power).
- Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by Customer. If EPC Contractor encounters material suspected to be hazardous, EPC Contractor will notify Customer representative and stop further work in the area until the material is removed.
- EPC Contractor will require the assistance of Customer personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. Customer will need to grant work access to each project location in its entirety, encompassing all solar arrays at a given site. EPC Contractor will provide any traffic control material and personal,

but will need Customer approval of Traffic Plans as needed. Also, sending notice to Staff at each site is requested.

- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- EPC Contractor will attempt to phase Construction in such a way as to avoid complete interruptions of service.
- Customer will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for EPC Contractor and EPC Contractor's subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount, except in circumstances where Supplier needs to recover time due to delays for which it is responsible.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. EPC Contractor will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, EPC Contractor will immediately notify Customer representative.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- Smoke detectors and fire alarm system work is excluded.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Water hose bibs for washing the panels are excluded.
- Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by EPC Contractor or its subcontractors, or otherwise agreed by the Parties.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Customer will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, EPC Contractor will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Customer is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.

**Customer's General Project Specifications:**

Customer's General Project Technical Specifications are attached to this Exhibit as Attachment 1. For purposes of this Attachment, the term "Contractor" means "Supplier" and/or "EPC Contractor" and the term "County" means "Customer," as those defined are defined in the Agreement.



Attachment 1 to Exhibit A –  
Customer's General Project  
Technical Specifications

## 1. Applicable Codes and Standards

The System(s)'s design, engineering, construction, interconnection, startup, and testing shall follow the applicable codes, standards, and publications that are in effect at the time of System(s) initiation, and which are consistent with current local utility standards and requirements. The codes and standards utilized shall be the latest editions in effect at the notice to proceed date. Materials manufactured within the scope of Underwriters Laboratories shall conform to UL standards and have an applied UL listing mark. If no UL compliance is available, material and equipment shall be labeled or listed by a nationally recognized testing laboratory. Where codes do not govern specific features of the equipment or system, Prudent Industry Practices (as defined in the Power Purchase Agreement between the County of Tulare and California Solar 1, LLC (the "PPA")), equipment manufacturer specifications, and standard industry standards shall apply. Where local codes or ordinances will have an impact on the design, the County and Contractor shall jointly address these with the local authorities having jurisdiction.

### 1.1 Permits

Contractor is responsible for obtaining all necessary required permits from the appropriate Authority Having Jurisdiction (AHJ) for project construction. Permits shall be paid for in accordance with Section 5.3, Required Approvals, of the PPA.

### 1.2 Utility Interconnection

Contractor is responsible for managing and obtaining interconnection approval from the Site(s) local utility company. Contractor is responsible for understanding and incorporating all knowable and impactful local utility interconnection rules in accordance with the Green Book and Rule 21 into their proposal.

## 2. Project Management

Contractor shall provide comprehensive project management services for the duration of the project, commencing at contract execution. Contractor shall be responsible for assigning a single project manager who will act as the lead for the design and construction phases of the project. Contractor shall be responsible for conducting weekly project management meetings, producing agendas and minutes for the weekly meetings, and keeping an up-to-date issues/actions log. Contractor shall implement and maintain an internal records management and document control system as required, to support the project.

Additionally, Contractor shall be responsible for developing a CPM schedule, which shall be updated and submitted weekly, showing the project's critical path as well as all activities required to complete the work (including the design, construction, construction phasing, testing, and close-out phases of the project) in sufficient detail to manage the complete scope of the project. The project schedule shall include all activities necessary to coordinate the work with other parties (e.g. County, consultants, inspectors, etc.) and will explicitly show the dependencies between all tasks. Contractor shall submit the schedule in MS Project format. In addition, schedules must also be submitted in Adobe Acrobat format.

### 3. Design and Engineering

Contractor shall design and engineer the System(s) in accordance with Prudent Industry Practices. The design must conform to the requirements and conditions of all applicable permits and laws, be in compliance with the operating guidelines, and meet County specifications. Contractor is responsible for all engineering for the System(s). A professional engineer-of-record in the State of California shall sign all design drawings, specifications, and calculations. The PPA provides for submission to the County of complete design drawings, data, and documents for review and comment. Contractor is responsible for ensuring that all components are installed above the 100-year flood plain (inverter stations, supervisory control and data acquisition system (DAS), PV modules, switchgear, transformers, combiner boxes, etc.).

#### 3.1 Site Audits

Contractor shall conduct detailed site audits to document and verify the existing conditions that will inform the system design and construction. Site Audits will be used to verify impacts to the Site(s) as part of the construction project. It is the responsibility of the Contractor to document existing conditions so that the post construction Site conditions meet the pre-construction standard.

#### 3.2 Engineering Design Package

Based on the review of the System(s), Site(s), and infrastructure, Contractor shall design (or have designed by consulting engineers) a System(s) (including all layout, civil, electrical, and structural components) that will produce the required electricity and that is capable of being operated in a safe, normal, reliable, and continuous manner as required by the contract documents at all operating conditions and modes specified below. The

system design shall comply with all applicable laws and regulations and applicable permits. The County may utilize a third-party or independent engineering consultant to perform technical reviews at County's expense. Studies prepared by the Contractor or any third-party consultants to the Contractor shall be provided to the County for review.

Design review shall consist of two phases of submittals: 50% completion of Schematic Design and Design Development, and Construction Documents, and 100% completion of Schematic Design and Design Development, and Construction Documents. Contractor shall submit each Engineering Design Package to the County for review and approval. The County review time shall not be more than ten business days per phase. Each Engineering Design Package must be approved by the County prior to submittal of a subsequent package. The Engineering Design Package shall include:

- Studies related to the project, such as the geotechnical engineering report Fire Department approval, and required ADA upgrades.
- Schematic, Design Development, and Complete Construction Documents, which include Plans, Specifications, and Engineering Calculations necessary to pull County permits
- Design calculations
- All drawings including mechanical, electrical, structural, civil, and construction drawings (site plans, schematic single lines, and detail drawings)
- Product description information
- Bill of Materials
- Equipment details, descriptions, and specifications, and cut-sheets
- Traffic Control and Parking Plan, including phasing of construction/installation
- Parking lot/driveway/internal roadways Paving Plan, including a Schedule of Values meeting the requirements of section 3.8 below (Note: per section 5.1(f) of the PPA, the exact locations and technical specifications for the parking lot development to be undertaken by Contractor under the PPA shall be separately agreed to in writing by representatives of the Contractor and the County's General Services Agency Director, or his or her designee).
- Diagrams/Site Plans for each site showing detailed locations of all existing fire hydrants and Cal Water easements

### 3.3 Geotechnical Report

A geotechnical analysis shall be provided by Contractor and performed by a qualified geotechnical engineering firm. The results of the analysis shall be used when designing the foundations for the structures on the Site(s) and made available to the County. The Geotechnical report and analysis shall comply with the requirements set forth in Section 1803 of the California Building Code.

### 3.4 Structural Engineering

Contractor shall design the PV arrays' mounting systems, foundations, and piers, as well as any equipment pads and buildings on the Site(s). The designs shall be based on the requirements of applicable codes, standards, and permits, and the information/specifications provided by the module, inverter, transformer, switchgear, racking structures, and all other vendors.

### 3.5 Civil Engineering

Contractor shall design all systems in accordance with applicable codes and standards, including the requirements of the applicable Fire Departments. Contractor shall perform required Site(s) preparation, to include earthworks, SWPPP, WQMP, and erosion control. Contractor shall attempt to minimize earthwork and vegetation disruption for the installation of the System(s) to the extent it is compliant with the use permits; however, vegetation should be controlled to minimize fire danger and provide the ability to operate and maintain the System(s). Dust control shall be maintained in accordance with state and County requirements until Substantial Completion is achieved. In accordance with Fire Department requirements, Contractor shall design, construct, and install all-weather access roadways to provide access to and around the ground-mounted solar photovoltaic systems to be constructed and installed hereunder.

To meet Fire Departments' requirements, Contractor shall undertake the following:

1. Hold a preliminary planning meeting prior to site construction with primary contractor and Tulare County Fire Department.
2. Access gates set back 30-feet from the roadway for fire apparatus access.
3. All combustible vegetation shall be removed from the site; weed abatement will occur annually, as needed to meet production guarantees.
4. Access roads of 90% compacted dirt subgrade will be provided around the perimeter of the ground-mounted solar systems.
5. Access roads shall be a minimum of 20-feet in width, with a maintained 13'-6" vertical clearance.
6. Responsible for training fire personnel of facility operations, hazards and emergency procedures for shutting down the operation.
7. Posted address visible from roadway, minimum 4-inch numbers.

8. No permanent or temporary buildings are to be installed/constructed within the access roads.

9. At Government Plaza site, Arrays #9 and 10 need to be a minimum height of 13'6" on the low side to accommodate a fire lane and the arrays will be required to be labeled with the appropriate maximum clearance height.

10. At Civic Center West site, Array # 1 needs to be a minimum height of 13'6" on the low side to accommodate a fire lane and the array will be required to be labeled with the appropriate maximum clearance height.

11. At Tulare Akers Professional Center site, Arrays #3 and #4 will need to be a minimum height of 13'6" on the low side to accommodate a fire lane and the arrays will need to be labeled with the appropriate maximum clearance height.

12. At Civic Center East: site, Array #16 will need to be a minimum height of 13'6" on the low side to accommodate a fire lane and the array will need to be labeled with the appropriate maximum clearance height.

If required, Contractor shall import engineered fill to slope the Site(s) and prevent accumulation of standing water. All imported fill must have proof of environmental testing/clearance for use. Contractor shall provide other Site(s) maintenance as needed during construction on any the County infrastructure affected by construction activities. Contractor shall coordinate interaction between the County and any permitting authorities (e.g. local AHJ) regarding the Work.

### 3.6 Electrical Engineering

Contractor shall provide all electrical engineering design services, meeting applicable codes and standards and the requirements of the interconnecting utility. The electrical engineering and design shall include the appropriate sizing and cabling (above and below ground) that will connect all applicable equipment to the point of interconnection. The Contractor is responsible for determining if the AHJ will allow 1,000/1,500 volt direct current (VDC) systems and to design accordingly. All protection equipment used throughout the system shall be sized and specified to reduce damage to all components to the utility interconnection point and County's gear and infrastructure in the event of electrical failure. The aboveground portion of the electrical systems shall be neatly routed to facilitate access, troubleshooting, maintenance, etc. The electrical design shall include the design of equipment grounding. Contractor shall design and specify all communications hardware and software required for system protection and remote monitoring. All monitoring and communication supplemental equipment and cabling shall be designed and specified by Contractor, subject to the County's review. The power

delivered to the grid must at all times meet the interconnect requirements for power factor.

### 3.7 Lighting System

Contractor shall provide a lighting system for all non-roof mounted systems in parking lots and under shade structures (1 lighting fixture per bay) and in areas where existing lighting must be removed to accommodate the arrays. Lighting systems shall comply with California Title 24 requirements. All lights shall be LED and bi-level motion sensing with photocells.

Lighting systems for shade-structure systems shall be included on the underside of the shade structure and illuminate the area under the array to an average of 0.5 foot-candles, with a minimum of 0.2 foot-candles and a maximum of 2.0 foot-candles. Lighting systems for shade-structure systems shall meet or exceed existing lighting levels of all areas impacted by the removal of the existing Lighting system, under the array or otherwise.

### 3.8 Schedule of Values

Contractor shall submit to the County, for review and approval, a Schedule of Values (SOVs) for the Assumed Parking Lot Development Cost (as defined in the PPA), prepared in such form and in sufficient detail to allow evaluation of construction pricing. Each line item in the SOVs must be broken down into generally accepted construction units of measurement and cost per unit. Attached as Attachment 2 is an example of a Line Item Schedule of Values that is required to be submitted for approval of the Assumed Parking Lot Development Cost.

### 3.9 Equipment and Materials

Contractor shall purchase and furnish to the Site(s) all material required to complete the System(s), including the following material:

- Miscellaneous steel
- Support steel posts
- Components (nuts, bolts, clamps, etc.)
- PV modules
- Fixed tilt racking equipment and components
- DC cabling and combiner boxes
- DC junction boxes
- AC cabling
- Power centers, including inverters

- Electrical switchgear
- Transformers
- Meteorological station
- Remotely accessible data acquisition system
- All materials related to drainage required by the civil engineering plan
- All electrical conduit and junction boxes
- Concrete equipment pads
- Fencing, gates, lighting,
- Generation meters

Each item of equipment to be supplied by Contractor shall be subject to inspection and testing during and upon completion of its fabrication and installation. Installed equipment and materials shall be new, of good quality and suitable grade for the intended purpose, and not a lower grade or quality than specified in the design and engineering plans or in manufacturers' recommendations. Where applicable, utility-grade equipment shall be used. Contractor shall provide a list of all major equipment to be purchased, constructed, and installed as part of the System(s). The list shall identify both the items and quantities.

#### 4.1 Modules

The PV module selected for this System(s) shall:

- A. Meet IEC 61215 (crystalline silicon PV modules) or IEC 61646 (thin film PV modules) standards for the model selected for this System(s).
- B. Be UL listed for the voltage specified for this System(s) (e.g., 600 V<sub>DC</sub>).
- C. Include all known and future duties, tariffs, export tariffs, customs, demurrage, and shipping costs.
- D. Be from an equipment manufacturer regarded as a Tier 1 Supplier.
- E. Demonstrate a 25-year rated lifetime via long-term outdoor testing and/or accelerated lifetime laboratory testing. Testing such as Thresher testing or Technischer Überwachungsverein (TÜV) long-term sequential testing of the specific model of the PV module selected is an acceptable demonstration of a 25-year module rating.
- F. Shall be on the California Energy Commission's approved list of solar modules available at [http://www.gosolarcalifornia.ca.gov/equipment/pv\\_modules.php](http://www.gosolarcalifornia.ca.gov/equipment/pv_modules.php)

Contractor shall provide the manufacturer's flash test data for all modules to the County upon procurement of modules.



## 4.2 Inverters

The inverter units shall be utilized for inverting the DC input from the System(s) to AC output. These shall be calibrated and set so that the AC output, after inverter clipping and losses between the inverter to the meter, shall not exceed the System(s) AC capacity at the meter. Contractor shall supply and install inverters and wiring/cabling to this equipment in accordance with National Electrical Code (NEC) standards.

Inverters selected for this project shall:

- A. Be UL listed to 1741 (Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources).
- B. Comply with IEEE 1547, including testing to IEEE 1547.1 and IEEE C62.45. Regulatory standards compliance shall also include IEEE C62.41.2 and CSA107.1-01.1.
- C. Be from an equipment manufacturer regarded as a Tier 1 Supplier.
- D. Be designed for a 10-year lifetime, assuming regular maintenance.
- E. Have a maximum harmonic distortion less than 3 percent of total harmonic distortion at rated power output.
- F. Have an efficiency of greater than 97.5 percent without medium-voltage step-up transformer.
- G. Be capable of rated output at 50°C or higher.

Incorporate a means of non-load break disconnection for all non-grounded circuit poles on the DC side for maintenance personnel safety. Inverters located outdoors shall be enclosed in lockable enclosures with a minimum rating of National Electrical Manufacturers Association (NEMA) 3R. Any sensitive electronic equipment associated with, or part of, the inverter shall be installed in a NEMA 3R rated enclosure. Inverters, integrated disconnects, and associated conduits must be installed as high as possible on structure, not accessible by unauthorized individuals. Conduits shall not protrude from inverters or disconnects in a manner that creates a climbing hazard. Enclosure must have a door interlock system to prohibit the door(s) from being opened while energized. Inverter output shall be protected by a circuit breaker. Inverters shall employ a maximum power point tracking scheme to optimize inverter efficiency over the entire range of PV panel output for the given Site(s) design conditions. Inverters shall be equipped with all hardware for data collection and communication to the data acquisition system.

### 4.3 Medium Voltage Transformers

Transformers shall meet transformer efficiency standards set forth in the most recent version of the Department of Energy "Energy Conservation Program for Commercial Equipment: Distribution Transformers Energy Conservation Standards; Final Rule." Transformers shall be rated for inverter source operation and the environment in which they will operate. The transformer shall be supplied with a no-load tap changer with high-voltage taps capable of operating at 2.5 percent above and below nominal voltage at full rating. The switch/transformer configuration shall be designed for loop feed. Transformers shall be either dry-type biodegradable fluid or less-flammable oil insulating fluid. Enclosure finish shall be a top powder coat that is designed for a 25-year service life. The County shall reserve the right to attend factory witness testing of step-up transformers.

### 4.4 Wire, Cable, Conduit and Connectors

Contractor shall provide information about proposed wire, cable, and connectors, including all underground facilities. Copper is the preferred conductor material; however, aluminum conductors are acceptable where allowed by current building electrical codes. Cable shall be designed and installed for a service life of 30 years. Cable for DC feeders and PV panel interconnect shall be 2-kilovolt 90°C (wet or dry) power cable type USE-2 or RHH/RHW-2 with XLPE jacket and UL 1581, VW-1 rating or approved equal for intended use capable of meeting DC collection system design current requirements. Externally installed cables shall be sunlight and ultraviolet resistant, suitable for direct burial, and conform to NEC 300.5 Underground Installation, Table 300.5 Minimum Cover Requirements, rated to the maximum DC voltage of the System(s). PV panel interconnect connectors shall be: (i) latching, polarized, and non-interchangeable with receptacles in other systems, and (ii) tap branch connectors with multi-contact termination connectors. Grounding member shall be first to make and last to break contact with mating connector and shall be rated for interrupting current without hazard to operator. Cables shall be listed and identified as PV wire as stated in NEC Article 690. If a cable tray is utilized, there shall be no self-tapping screws, only a clamping mechanism to secure the top. All underground cable shall be identified in the record drawings. Galvanized, rigid metal conduit where underground cable is exposed above ground or stubbed up to junctions or poles shall be used except where protected by concrete caissons. The use of EMT conduit is acceptable under canopies overhead but not down columns as approved by the County during design and construction. Rigid Metal Conduit shall be used for transitions to underground. Rigid metal conduit shall be included in the corrosion mitigation plan and shall be designed for a 30-year life in the Site(s) soils and conditions. All 90-degree bends shall follow NEC minimal bend requirements. There shall be no direct burial of cables. No underground cable splicing shall be acceptable under any

circumstance. All cable splices shall be brought above ground and housed in a suitable enclosure or, if below grade, placed in a suitable vault that is clearly marked.

#### 4.5 Medium Voltage Switchgear

Switchgear shall be located outdoors in a NEMA 3R lockable enclosure. Switchgear shall include an auxiliary compartment containing all instrument transformers associated with the protective relays and the 120/240-V CPT shown in the one-line diagram(s). The CPT shall be fused and disconnectable. The CPT shall be sized and single-phase breakers shall be included to supply power to a 120-V convenience receptacle and a fluorescent light within the switchgear enclosure, switchgear heaters, and the 240/120-V<sub>AC</sub> panelboard within the communications shelter (if applicable). Medium-voltage protective device selection and relaying should be based on the use of Schweitzer Electric Laboratories relays or approved other, as required and specified in the Interconnection Agreement. In general, the interconnection design and components should meet the requirements of the interconnecting utility and the interconnection agreement (including the necessity of a grounding transformer if required).

#### 4.6 Combiner Boxes

Combiner boxes shall be rated for maximum system voltage and maximum system continuous and short-circuit currents. All enclosures shall be rated NEMA 4 and shall have integral key lock or provisions for padlocking. DC inputs shall be fused with finger safe fuse holders for both positive and negative conductors and all fuses shall have blown fuse indication. Combiner box output shall be externally disconnectable. If the combiner box has a lightning protection device, the device should include a visual trip indicator. Combiner boxes and associated conduit shall be installed as high as possible under structures and be installed in a manner that is not accessible by unauthorized individuals and does not create a climbing hazard.

#### 4.7 DAS and Monitoring Equipment

Contractor shall supply and install a County approved Data Acquisition System (DAS) including monitoring hardware and software package. The monitoring system shall provide energy generation data, historical data, solar insolation attributes, and meteorological data.

Points to be monitored by the DAS system shall include, at a minimum:

- Irradiance in plane of array
- Global horizontal irradiation

- AC voltage and current
- DC voltage and current
- Kilowatts (kW) and Kilowatt hours (kWh)

The following shall make up the DAS calculated values list:

- Modeled production based on measured meteorological data
- Day's energy in kWh
- Month's energy in kWh
- Year to date energy in kWh
- Total lifetime energy in kWh
- PEGU provided reporting

The system shall be configured to sample data, 5-minute average intervals, and shall be configured to update the server at least once every 15 minutes. The system shall store the 1 to 15-minute averaged interval data for the life of the System. The system shall be capable of issuing alarms and notices to alert the system manager and operation and maintenance (O&M) Contractor to potential system problems and outages. The metering and monitoring system shall comply with the accuracy requirements and general standards set forth in IEC 61724, with the exception of the irradiance meter, which shall have an accuracy of better than +/- 5% of the reading. The metering scheme shall be capable of reading the net electrical energy to the grid during daylight hours and the nighttime auxiliary loads when the System(s) is in standby mode. The monitoring system data shall be accessible through an online dashboard, which allows for logging into administrator panel views. The panel view shall display current, daily, monthly and annual data for the System. Raw data shall be downloadable for any time period of stored historical in an easy fashion. All electronics shall be enclosed in a NEMA 3R enclosure. The data shall be collected at hardwired locations and transmitted wirelessly via a cellular modem, or other means, to be provided and installed by Contractor. Contractor shall test the installed communications system to demonstrate its ability to meet the requirements of its intended use. Testing shall be done when the final system interconnections have been made.

#### 4.8 Revenue Meter

A bi-directional revenue grade meter shall be installed to measure the total System(s) output at the switchgear for accurately metering energy (kWh) generated by the System(s). The revenue grade meter shall be American National Standards Institute (ANSI) C12.20 0.2% Class UL listed, ISO9001 certified and accepted by all authorities requiring revenue grade. The meter must have a display for easy reading of current power generation and lifetime generation and shall be compliant with Western Renewable

Energy Generation Information System certification requirements for Renewable Energy Credit sales or trading. The revenue grade meter may be incorporated into a System's DAS if acceptable by the interconnecting utility. In addition to the performance requirements indicated above, all SPDs shall be compliant to the respective domestic or international standards, including Underwriters Laboratories, Inc. (UL) Standard 1449 3rd edition. SPDs for Measurement, Control, Instrumentation, and Communications Circuits

## 4.9 Mounting and Racking Systems

### 4.9.1 Fixed Tilt Racking Structure

The fixed tilt racking system (if applicable) shall include the racking structure and all module-mounting hardware. The racking vendor may supply the supports if desired, or a third party may provide the supports. The rack's azimuth and tilt angle shall be specified on the engineering drawings. The racking system shall be designed using the environmental loads and the Occupancy Category appropriate for the installation condition and specified by local codes. The racking structures, support attachments, module mounting brackets, fastening hardware, and supports (if applicable) shall have a 30-year design lifetime. Equipment shall have corrosion protection coatings as included in this specification and utilize appropriate fasteners that are similar metals.

### 4.9.2 Shade Structure Racking Systems

All wiring shall be run in a neat manner in which there are no wires running below purlin supports. All conduit shall be mounted on the support structure in a manner that inhibits climbing or hanging. Columns and steel beams shall be painted with one coat of primer and one coat of paint, color to be selected by the County from Contractor's standard deck. All shade-structure systems shall include fascia on all sides. All columns on all systems must include a minimum 30" height above grade concrete bollard. Contractor must include metal column baseplate bolt covers. Plastic baseplate covers will not be accepted. All Shade-structures shall have a minimum clearance height of ten (10) feet as defined from grade to bottom of beams.

#### 4.9.2.1 Shade Structures in Parking Lots

Column locations shall minimize impacts to existing parking and placed to maintain all existing parking spot dimensions. Contractor shall provide concrete wheel stops in parking spots that will have a column in the front of the parking spot. Contractor is responsible for verifying and understanding existing ADA parking, striping, and paths of travel and what code required upgrades will be necessary as a result of the solar project. Contractor is responsible for all required ADA upgrades, striping, and path of travel under arrays, and to connecting ADA compliant path of travel. Contractor is not responsible for adding new ADA parking spaces, nor for covering any existing ADA parking spaces not

otherwise included in the preliminary site layouts shown in Exhibit A (Scope of Work) of the PPA.

#### 4.9.3 General Racking Requirements

Contractor to provide clearance labels on all systems at all exposed sides of the PV structures.

### 4.10 Interconnection

Contractor is responsible for the cost of designing, procuring equipment for, and installing all interconnection and metering facilities required to deliver the System(s)'s electrical output to the proposed point of connection on the interconnecting utility's electrical system, in accordance with and subject to the exclusions and clarifications the PPA and the Interconnection Agreement of the interconnecting utility.

### 4.11 Materials

Contractor shall submit a steel fabrication package in advance of site design drawings to the appropriate AHJ for approval, if necessary, without additional cost to the County.

No equipment shall utilize polychlorinated biphenyls (PCBs). It is the responsibility of Contractor to identify any equipment using SF6 gas. It is the responsibility of Contractor to identify any proposed batteries and provide quantities and associated data sheets. It is the responsibility of Contractor to provide data sheets and quantities on any proposed chemicals used on the System(s).

### 4.12 Equipment Delivery, Staging, and Storing

Equipment and materials shall arrive at the Site(s) so as to not delay System(s) completion. Contractor shall be responsible for receiving and storing all freight at the Site(s), or in an alternative agreed upon location, in a secure manner.

Prior to the arrival of equipment and materials at the Site(s), the Contractor shall install a fenced, secured area and provide security for the storage of such equipment and materials. Contractor shall notify and receive approval in writing from the County of the location and layout of intended staging areas, parking areas, storage areas, office areas, workshops, and other temporary facilities. All laydown and staging areas and plans shall be submitted, reviewed and approved by the County prior to commencement of construction. Temporary construction roads and staging areas not converted to permanent roads (if any) shall be restored in accordance with all permit requirements and/or restore to existing condition prior to the start of construction.

## 5. Other Requirements

### 5.1 Fit and Finish

Contractor must provide accurate locations and routing of installed underground conduit and utilities completed as part of the project on the final as-built plan sets.

Contractor is responsible for repairing any damage to the existing facilities or grounds that occur as a result of the construction including but not limited to asphalt marking, stains, track marks, cracks, holes, or damage to any vegetation, underground utilities, and irrigation lines. Contractor is responsible for documenting all existing conditions prior to the start of construction, as well as proposing and executing repair and potential re-routing methods that are to be reviewed and approved by the County.

Contractor is responsible for maintaining the existing functionality of equipment and services impacted by the resulting work, including but not limited to existing irrigation functionality and control, and lighting. Contractor will be responsible for maintaining current functionality of adjacent lighting that will not be replaced as part of the project.

### 5.2 Demolition and Disposal

Contractor must identify existing shading concerns as verified through a solar shading study and submit a plan that identifies existing objects or trees that are to be removed or trimmed. The plan shall identify the height that trees are to be maintained at moving forward. The Contractor is responsible for tree removal as approved by the County. Light poles and concrete bollards under PV canopies are also the responsibility of the Contractor to remove as approved by the County.

Contractor shall be responsible to flush cut poles and bollards/bases to grade. Exposed finish should be patched smooth and flush with adjacent grade.

Contractor shall remove all parking that are to be covered by the arrays. Islands shall be removed to grade and covered and patched back to match existing field of parking.

### 5.3 Tree Replacement/Trimming/Maintenance

Based on County's preliminary review of the proposed sites layouts, it appears that existing trees to be removed in order for Contractor to install the proposed Systems will not need to be replaced. However, if replacement of existing trees is ultimately required, then Contractor shall be responsible for replacement of the removed trees with new trees to County's reasonable satisfaction. Replacement trees are required to be of similar type as those removed and planted in a location of the County's choosing. Contractor shall cover the cost of the tree, site and soil preparation, and planting. New irrigation systems



or extensions of existing irrigation systems to provide water to new trees is not included in Contractor's scope.

Likewise, based on County's preliminary review of the proposed sites layouts it appears there are several valley oaks and other large, majestic trees that may require trimming or other maintenance in connection with the Project. Contractor will undertake this work and retain a certified arborist to oversee it, in conjunction with County staff.

Contractor has included an allowance of \$15,000 for tree replacement/trimming/maintenance in its budget for the Project. Any costs beyond this for such activities will be the responsibility of the County.

## 5.4 Clean-Up

Contractor shall at all times maintain its work area in an orderly manner. Contractor shall keep the premises, including the Premises, the Project, and the adjacent sidewalks, streets, drives, parking lots, and roadways free from accumulation of waste materials or rubbish caused by Contractor's operations on a daily basis or as directed by the County. At the completion of the Work, Contractor shall remove all of the Contractor's waste materials and rubbish from and about the Project as well as all the Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work (normal maintenance due to use by the County's employees or the public excepted.) Contractor, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

# 6. Quality Control and System Testing

## 6.1 Quality Control Plan

For each performance and installation requirement, the Contractor's Quality Control Plan (QCP) shall identify: item/system to be tested, exact test(s) to be performed, measured parameters, inspection/testing organization, and the stage of construction development when tests are to be performed. Each inspection/test shall be included in the overall construction schedule. The Contractor is not relieved from required performance tests should these not be included in the plan.

The QCP is intended to document those inspections and tests necessary to assure the County that product delivery, quality and performance are as required. An example of these inspections/tests is the final test/inspection for overall performance compliance of



the system. Results from tests and inspections shall be submitted within 24 hours of performing the tests and inspections.

At a minimum, the QCP should conform to "IEC 62446 Grid Connected Photovoltaic Systems - Minimum Requirements for System Documentation, Commissioning Tests, and Inspections (2009)".

Performance tests will be conducted at the final commissioning/acceptance testing. Performance tests will include I-V curve traces for all PV strings. For project acceptance, measured performance at maximum power point must be at least 90% of expected performance, which will be adjusted for concurrently measured cell temperature and plane of array (POA) irradiance. This can be accomplished using a current industry standard I-V curve tracer with capability to compare measured PV string I-V curves with nameplate performance of PV string compensated for concurrent cell temperature and POA irradiance measurements. The Contractor shall supply the County with detailed documentation of malfunction or errors and all corrective actions taken.

#### 6.1.1 Submissions

The QCP shall be prepared and submitted within 21 calendar days of the final approval of system designs and prior to any construction on-site. The QCP may be rejected as incomplete and returned for resubmission if there is any performance, condition or operating test that is not covered therein.

#### 6.1.2 Updating

During construction, the Contractor shall update QCP if any changes are necessary due to any changes or schedule constraints. The County shall be notified immediately of any schedule and/or procedural changes.

### 6.2 Inspections and Tests

In addition to the required AHJ inspections, Contractor shall perform inspections and tests throughout the construction process including: existing conditions/needs assessments, construction installation placement/qualification measurements and final inspections/tests performance certification.

#### 6.2.1 County Witness

All inspections and tests, to verify documented contract assumptions, to establish work accomplishment, or to certify performance attainment may be witnessed by the County and/or an Agent on their behalf and coordinated through the QCP.

### 6.2.2 Final Inspections and Tests

To ensure compliance with provisions of the NEC, an inspection by a licensed electrical inspector is mandatory after construction is complete. Unless otherwise identified, manufacturer recommendations shall be followed for all inspection and test procedures. The NEC inspection shall be conducted by a qualified electrical inspector familiar with

Tests shall include a commissioning of the array. Commissioning tests shall conform to the requirements in the QCP. Commissioning shall be performed for the entire PV system. This data shall be used to confirm proper performance of the PV system.

### 6.2.3 Documentation

Inspections/tests required in the QCP shall result in a written record of data/observations. The Contractor shall provide electronic copies of documents containing all test reports/findings. Test results shall typically include: item/system tested, location, date of test, test parameters/measured data, state of construction completion, operating mode, parties present, test equipment description and measurement technique.

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**EXHIBIT B  
CONTRACT PRICE**

<b>Year</b>	<b>Contract Price (\$/kWh)</b>
1	\$0.1110
2	\$0.1110
3	\$0.1110
4	\$0.1110
5	\$0.1110
6	\$0.1110
7	\$0.1110
8	\$0.1110
9	\$0.1110
10	\$0.1110
11	\$0.1110
12	\$0.1110
13	\$0.1110
14	\$0.1110
15	\$0.1110
16	\$0.1110
17	\$0.1110
18	\$0.1110
19	\$0.1110
20	\$0.1110
21	\$0.1110
22	\$0.1110
23	\$0.1110
24	\$0.1110
25	\$0.1110

**EXHIBIT C  
EXPECTED ENERGY PRODUCTION**

Year	kWh
1	1,797,648
2	1,788,660
3	1,779,717
4	1,770,818
5	1,761,964
6	1,753,154
7	1,744,389
8	1,735,667
9	1,726,988
10	1,718,353
11	1,709,762
12	1,701,213
13	1,692,707
14	1,684,243
15	1,675,822
16	1,667,443
17	1,659,106
18	1,650,810
19	1,642,556
20	1,634,343
21	1,626,172
22	1,618,041
23	1,609,951
24	1,601,901
25	1,593,891

**EXHIBIT D  
EXPECTED ANNUAL GLOBAL IRRADIATION**

<b>Location</b>	<b>Expected Annual Global Irradiation (kWh/m<sup>2</sup>)</b>
Tulare Akers Professional Center	1,917.0

**EXHIBIT E  
BUYOUT AMOUNT**

<b>Anniversary of Final Commercial Operation Date</b>	<b>Buyout Amount (\$)</b>
10	\$2,037,336.00
15	\$1,509,836.00
20	\$694,542.00
25	\$55,864.00

**EXHIBIT F**  
**DEFINED TERMS**

**“Affiliate”** means, with respect to any entity, such entity’s general partner or manager, or any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

**“Applicable Law”** means any statute, law, treaty, building code, rule, regulation (including, without limitation, anti-glare regulations and Federal Aviation Administration requirements), ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect on the Effective Date.

**“Assumed Parking Lot Development Cost”** means \$750,000.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**“Buyout Amount”** means the amount shown on Exhibit D that corresponds to the year in which the purchase of the System occurs.

**“CEQA”** means the California Environmental Quality Act, codified at California Public Resource Code §21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

**“Change in Law”** means any of the following events or circumstances occurring after the Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

**“Code”** means the Internal Revenue Code of 1986, as amended, or any successor federal tax statute.

**“Commercial Operation”** means that a System is capable of generating electricity and all necessary approvals for the sale and delivery of such electricity have been obtained.

**“Commercial Operation Date”** means the date that Supplier notifies Customer that Commercial Operation of a System has been achieved.

**“Contract Price”** means the price of Energy Output set forth in Exhibit B.

**“Contract Year”** means each full twelve-month period following the Commercial Operation Date, and each year thereafter will be based on the succeeding twelve-month period.

**“Customer Event of Default”** means an Event of Default as to which Customer is the defaulting Party.

**“Customer Person”** means Customer, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other persons acting on behalf of Customer or for whom Customer is responsible.

**“Energy”** means electric energy (alternating current, expressed in kilowatt-hours) generated by the System.

**“Energy Output”** means the actual and verifiable amount of Energy delivered to Customer at the relevant Interconnection Point at any time after the Effective Date, as metered in whole kilowatt-hours (kWh) at the relevant Meter. The Energy Output delivered to Customer at an Interconnection Point shall be deemed to be equal to the energy measured at the relevant Meter; actual energy losses between a Meter and the relevant Interconnection Point shall not affect the Energy Output.

**“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever titled, attributable to the System, the generation of electrical energy from the System, and the displacement of conventional energy generation, that are in effect as of the Effective Date or that may come into effect in the future. Environmental Attributes include, without limitation, (i) renewable energy credits; (ii) 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; and (iii) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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.

**“Environmental Conditions”** means the past or present disposal, release or threatened release of any Hazardous Material and/or any other condition that could result in liability under any Environmental Law.

**“Environmental Incentives”** means any and all (i) any investment tax credits attributable to the System (or any component thereof) or Energy Output, (ii) production tax credits attributable to the System (or any component thereof) or Energy Output, (iii) accelerated depreciation attributable to the System (or any component thereof) or Energy Output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source including incentives under the California Self-Generation Incentive Program, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, and (vii) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under Applicable Law attributable to the System (or any component thereof) or Energy Output, irrespective of whether such Environmental Incentives accrue for the benefit of Supplier, any Affiliate, or any investor of Supplier.

**“Environmental Law”** means any and all federal, state, and local laws, regulations, ordinances, rules, and requirements of any Governmental Authority that concern the protection of human health or the environment.

**“Excusable Event”** means an act, event, occurrence, condition or cause beyond the control of Supplier, including, but not limited to, the following: (i) any act or failure to act of, or other delay caused by any Customer Person; (ii) the failure to obtain, or delay in obtaining, any interconnection agreement, or Required Approval (including due to failure to make timely inspection), or delays caused by changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of Supplier; (iii) changes in the design, scope or schedule of the System required by any Governmental Authority or Customer Person; (iv) undisclosed or unforeseen conditions encountered at the Premises, including discovery or existence of Hazardous Material; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the



System, including any further or subsequent approval required with respect to any change in the Scope of Work, other than a failure caused by the action or inaction of Supplier; (vi) information provided to Supplier by any Customer Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) delay caused by pending arbitration; or (ix) an event of Force Majeure.

**“Fair Market Value”** means the fair market value of the System Assets, in place, determined by an Independent Appraiser.

**“Final Commercial Operation Date”** means the date that Supplier notifies Customer that Commercial Operation for all Systems has been achieved.

**“Financial Statements”** means with respect to a Party, such Party’s most recently available unaudited balance sheet and statement of income and cash flows as of a previous fiscal quarter and such Party’s most recently available audited statement of income and of cash flows, each prepared in conformity with generally accepted accounting principles (GAAP) in the United States of America.

**“Financing Party(ies)”** means any person providing debt or tax equity financing for the design, development, construction, installation, operation and maintenance of the System, including any trustee or agent acting on their behalf, a lessor under a sale/leaseback transaction or a limited liability company in a partnership flip transaction or any subsidiary of such entities.

**“Force Majeure”** means any act or event that prevents or delays the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Force Majeure includes but is not limited to: (i) acts of God and other natural phenomena, such as storms, extraordinary seasonal conditions, tornados, hurricanes, floods, lightning, landslides, and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omission of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage or vandalism, epidemic, terrorist acts, or rebellion; (iv) any industry or trade-wide national labor dispute or strike or any other strike or labor dispute not directed solely at a contractor or vendor; (v) any Utility power outage at the Premises; and (vi) action or failure to act by a Governmental Authority, including a moratorium on any activities related to this Agreement.

**“Governmental Authority”** means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

**“Governmental Charges”** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including sales, use, gross receipts, possessory interest, or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy Output, the Premises, or this Agreement.

**“Hazardous Material”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous

materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

**“Independent Appraiser”** means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar energy generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Supplier or any Affiliate of Supplier or Customer or any Customer Person or Affiliate of Customer.

**“Interconnection Point”** means each of the delivery point(s) where the System connects to the existing electrical systems serving the System.

**“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement, the System, the Premises, or the transaction contemplated hereby.

**“Prudent Industry Practices”** means those reasonable practices, methods and acts, as they may change from time to time, that (a) are commonly used to own, manage, operate and maintain solar energy generating facilities and associated facilities of the type that are similar to the System, safely, reliably and efficiently and in compliance with Applicable Laws and manufacturers’ warranties and recommendations and (b) are consistent with the exercise of the reasonable judgment, skill, diligence, foresight and care expected of a solar energy generating facility operator in order to efficiently accomplish the desired result consistent with safety standards and Laws, in each case taking into account the location of the System, including climatic, environmental and general conditions. Prudent Industry Practices are not intended to be limited to the optimum practices or methods to the exclusion of others, but rather those practices or methods generally accepted or approved by a significant portion of the photovoltaic solar power industry during the relevant time period.

**“Required Approvals”** means permits, licenses or other approvals from any federal, state, county or local Governmental Authority or other third parties, directly related to and required for the design, installation, construction, and operation of the System, and the sale and delivery of the Energy Output and Energy Storage Services.

**“Supplier Event of Default”** means an Event of Default as to which Supplier is the defaulting Party.

**“System Assets”** means each and all of the assets of which the System are comprised, including Supplier’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators battery energy storage systems and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Interconnection Points, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

**“System Loss”** means loss, theft, damage or destruction of the System or System Assets, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, eminent domain, condemnation or Force Majeure).

**“Tax Benefits”** means the right to all items of income, deduction and depreciation arising from ownership of the System, and any tax credits under the Internal Revenue Code or applicable state law (or in either case any successor law), and any United States Treasury grant or similar program in lieu of tax credits irrespective of whether such items accrue for the benefit of Supplier, any Affiliate of Supplier, or any investor of Supplier.

**“Unforeseen Conditions”** means subsurface or otherwise concealed physical conditions at the Premises that Supplier could not reasonably have been expected to discover through Visual Verification in advance of the Effective Date.

**“Utility”** means the local provider of electric transmission and distribution services to Customer at the Premises.

**“Visual Verification”** means diligent physical inspection without any destructive or invasive action.

**EXHIBIT G**  
**RULES OF INTERPRETATION**

In this Agreement, unless expressly provided otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Agreement and a reference to a recital, Article, Section, subsection or paragraph of this Agreement or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Agreement or other agreement in which it is used unless otherwise stated;

(b) references to this Agreement, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;

(d) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a person includes a reference to the person’s executors and administrators (in the case of a natural person) and successors, substitutes (including persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) “including” means “including, but not limited to,” and other forms of the verb “to include” are to be interpreted similarly;

(j) references to “or” shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”);

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a day is a reference to a calendar day unless the defined term “Business Day” is used, (ii) a month is a reference to a calendar month and (iii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) a reference to time is a reference to the time in effect in the State where the System is located on the relevant date;

(q) if a payment prescribed under this Agreement to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day; and

(r) whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Agreement, and this Agreement does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the other Party's performance under this Agreement.

**EXHIBIT H  
SITE LEASE**

**[SEE ATTACHED]**

## SITE LEASE AGREEMENT

(Tulare Akers)

This Site Lease Agreement (this "**Site Lease**") is made and entered into as of Oct. 11 2018 (the "**Effective Date**") between COUNTY OF TULARE, having offices located at 2800 W. Burrell Ave., Visalia, CA 93291 ("**Lessor**"), and CALIFORNIA SOLAR 1, LLC, a Delaware limited liability company having offices located at 1990 Post Oak Boulevard, Suite 1900, Houston, TX 77056 ("**Lessee**"). Lessor and Lessee are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**."

### RECITALS

- A. Concurrently herewith Lessor and Lessee have entered into a certain Solar Power Purchase and Energy Storage Services Agreement (the "**Agreement**"), wherein Lessee has stated its intent to construct, install, own, operate and maintain a solar energy generating and storage system ("**System**"), as more particularly described in Exhibit A, on the Premises (as defined below), and Lessor has agreed to lease the Premises to Lessee for such purpose. Lessee is referred to as the "Supplier" under the Agreement.
- B. Lessor owns fee simple title to that certain real property, as more particularly described on Exhibit D (the "**Property**"), upon which the Premises is located. Lessor is referred to as the "Customer" in the Agreement.
- C. In order to build, operate, maintain, replace, and remove the System in accordance with the Agreement, Lessee requires access to and use of the Premises.
- D. Lessee desires to sell to Lessor, and Lessor desires to purchase from Lessee, the Energy Output generated by the System during the Term of (and otherwise in accordance with the terms and conditions of) the Agreement.
- E. In order to carry out the terms of the Agreement, Lessor agrees to lease the Premises to Lessee on the terms and conditions set forth in this Site Lease.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, the execution of the Agreement by the Parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### LEASE

**Section 1. Defined Terms; Rules of Interpretation.** Capitalized terms used in this Site Lease and not otherwise defined herein shall have the meanings ascribed to them in Exhibit E to the Agreement. The rules of interpretation set forth in Exhibit F to the Agreement shall govern the interpretation of this Site Lease.

**Section 2. Site Lease.**

(a) Lessor hereby leases to Lessee for Lessee's exclusive use, and Lessee hereby leases from Lessor, during the Site Lease Term (as defined below):

(i) Approximately 81,000 square feet of land (the "**Leased Land**," more particularly described in Exhibit B) which constitutes a portion of the Property;

(ii) the non-exclusive use of such additional space on the Property as mutually agreed by the Parties, including the Interconnection Point (as defined below), and as reasonably necessary for the installation, operation and maintenance of Lessee's utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary equipment and appurtenances (collectively, the "**Cabling Space**") running between and among the Leased Land and the Interconnection Point, and all necessary



electrical and other utility sources located on the Property, *provided, that* all such additional space will be mutually agreeable to both Parties and will not cause any undue burden to the daily operations of Lessor;

(iii) the temporary use of additional space on the Property immediately adjacent to the Premises as reasonably necessary during the installation, maintenance, repair, replacement, improvement or removal of the System on or from the Premises; the use of Lessor's electricity and water already available on the Property and accessible to the Premises for purposes of construction, cleaning and maintenance of the System. Lessee assumes all risk and liability associated with its use of such utilities; and

(iv) the non-exclusive right of ingress and egress from a public right-of-way over areas of the Property to and from the Premises as reasonably necessary to access the same.

(b) Subject to the terms and conditions of the Agreement, Lessor hereby grants to Lessee all easements, rights of entry, rights of transit, rights of way and other rights to enter, cross and use the Property and each part thereof for all purposes and activities reasonably related or connected to the operation and construction of the System.

(c) The Leased Land, the Interconnection Point and the Cabling Space, and the appurtenances thereto granted hereunder, collectively represent the real property leasehold interest of the Lessee (the "**Premises**"), as further depicted in Exhibit C attached hereto.

### **Section 3. Delivery of Premises.**

(a) Lessor shall deliver the Premises to Lessee on the Effective Date in a condition ready for Lessee's installation of the System and free of debris.

(b) Lessor represents and warrants to Lessee that, as of the Effective Date:

(i) the Leased Land is: (A) fit for the intended purpose of this Site Lease and the Agreement, which Lessee has independently verified to its satisfaction through its own due diligence investigations of the Leased Land, (B) in good condition, (C) in compliance with all Laws (as defined in Section 15), and (D) free of any substance or matter defined as a toxic or Hazardous Material;

(ii) there is no existing, pending, or, to Lessor's knowledge, threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Premises, Lessor, or any constituent entity or individual of Lessor, that, if adversely determined, would be reasonably likely to adversely affect (A) Lessor's ability to perform its obligations under this Site Lease, (B) the Premises, (C) this Site Lease, or (D) Lessee's ability to use the Premises as permitted by this Site Lease (including to develop, operate, maintain, replace, and remove the System); and

(iii) Lessor owns fee simple title to the Premises, and there are no leases (including ground leases and master leases), liens, security interests or other encumbrances on the Premises, except as disclosed on Exhibit E ("**Permitted Liens**") and Lessor has obtained all necessary consents and non-disturbance agreements to ensure Lessee's continued occupancy of the Premises as permitted by the Site Lease.

### **Section 4. Term.**

(a) The term of this Site Lease (the "**Site Lease Term**") shall commence on the Effective Date and, unless terminated pursuant to the terms of this Site Lease, shall expire upon the expiration of the Term or earlier termination of the Agreement *plus* the removal period provided under Section 4.4 of the Agreement (the "**Removal Period**").

(b) The leasehold interest granted herein is an *in rem* interest of record that burdens and runs with the Premises and will not be extinguished or affected by a sale of the Premises completed pursuant to Bankruptcy Code § 363(f), 11 U.S.C. § 363(f).



**Section 5. Rent.** The Lessee agrees to pay the sum of Ten Dollars (\$10) rent to the Lessor on the Effective Date (the "**Rent**"), as consideration for Lessee's use of the Premises during the Site Lease Term.

**Section 6. Use.**

(a) Lessee shall use the Premises for the purpose of design, construction, installation, ownership, operation, maintenance, repair, improvement, replacement, and removal of the System and uses incidental thereto (the "**Permitted Use**") pursuant to the Agreement and for no other purpose without the prior written consent of Lessor.

(b) Lessee shall carry out the Permitted Use in accordance with all Applicable Laws, rules, codes, and ordinances.

(c) Without limiting any other provision of this Site Lease, Lessee agrees that Lessee's obligations under the Agreement and this Site Lease shall be performed: (i) in a good and workmanlike manner; (ii) using principles, criteria and standards generally accepted for use in connection with commercial solar power facilities of the same or similar size and type as the System in the United States; and (iii) in accordance with the Agreement and this Site Lease. All engineering work requiring certification shall be certified by professional engineers properly qualified and licensed to perform such engineering services in California.

(d) At all times during the Site Lease Term, Lessee shall have exclusive and continuous access to direct sunlight for operation of the System. Lessor acknowledges and agrees that access to sunlight ("**Insolation**") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee entering into this Site Lease. Accordingly, Lessor shall not permit any interference with Insolation on and at the Premises. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Property (or, to the extent subject to Lessor's control, adjacent to the Property), permit the growth of foliage on the Property (or, to the extent subject to Lessor's control, adjacent to the Property), or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other airborne matter on the Property (or, to the extent subject to Lessor's control, adjacent to the Property), in each case that could materially adversely affect Insolation of the System. If a Change in Law occurs, or if Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could result in diminishing the Insolation to the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing levels of Insolation at the Premises. To the extent any filings, notices or other arrangements are available pursuant to Applicable Law for the purpose of protecting the Insolation of the System, Lessor will cooperate with Lessee in preparing and filing any necessary documentation related thereto.

(e) Lessee shall have access to the Premises twenty four (24) hours per day, seven (7) days a week.

(f) Lessor covenants that Lessee shall peaceably and quietly have, hold and enjoy its leasehold interest in the Premises during the Site Lease Term for its Permitted Use of the Premises in accordance with the Agreement and this Site Lease, and Lessor shall cooperate as reasonably requested by Lessee to protect and defend Lessee's leasehold interest hereunder from any other rights, interests, titles and claims arising through Lessor or any other third person or entity that threaten or challenge such leasehold interest.

**Section 7. Installation and Ownership of System.**

(a) Lessee shall have the right at any time and from time to time to install the System and other System Assets, and repair, replace, remove, improve, enhance, relocate or replace the same or any portion thereof with new or different items with the same or different specifications so long as the installation of such System and other System Assets is otherwise in compliance with this Site Lease, the Agreement, and all Applicable Laws.

(b) Lessor acknowledges and agrees that, notwithstanding the System's presence and operation on the Premises, (i) Lessee is the exclusive owner and operator of the System, except in the case of a sale-and-leaseback financing (in which case title to the System would transfer to the applicable Financing Party), (ii) Lessor has no ownership or other interest in the System or other equipment or personal property of Lessee installed on the Premises, and (iii) Lessee may remove all or any portion of the System or other equipment or personal property at any time in compliance with this Site Lease and the Agreement. Lessor further acknowledges and agrees that the System is Lessee's personal property and may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a "**Transfer**") with the fee interest or leasehold rights to the Premises or otherwise by Lessor, any person acting for, on behalf of, through, or for the benefit of Lessor, or any other subsequent owner of such interest in the Premises. Lessor shall indemnify, defend and hold harmless Lessee against all losses, claims, costs and expenses (including attorneys' fees) incurred by Lessee in discharging and releasing any lien, encumbrance, pledge, levy or attachment on or with respect to the System, arising by, under or through Lessor. Without limiting the generality of the foregoing, Lessor hereby waives any statutory or common law lien that it might otherwise have in or to the System or other equipment or personal property or any portion thereof. Lessor shall give Lessee at least thirty (30) days written notice prior to any Transfer of all or a portion of the Premises identifying the transferee, the portion of Premises to be Transferred and the proposed date of Transfer. Lessor shall require any transferee to acknowledge and consent to the terms of this Site Lease. Lessor agrees that this Site Lease and the rights granted in Section 2 of this Site Lease shall run with the Premises and survive any Transfer of the Premises.

(c) Lessor acknowledges that notwithstanding the System's presence on the Premises, Lessee or its affiliate or transferee is the exclusive owner of the Energy generated by the System and owner of the Tax Benefits, Environmental Attributes, and Environmental Incentives of the System.

(d) Lessor shall not permit any mechanics' or materialmen's lien to be placed upon the Premises or the System or any part thereof for any work performed on the Property during the Site Lease Term or during the six (6) month period prior to the Effective Date and shall, promptly upon discovery of the same provide Lessee with written notice of, and at its sole cost and expense, promptly remove (or cause to be removed) any such mechanics' or materialmen's lien.

(e) Lessor shall deliver to Lessee, within thirty (30) days of the Effective Date, a third party environmental report detailing the history of the Premises and the presence of any Hazardous Materials, and any ALTA survey or other type of survey detailing the Premises.

(f) Notwithstanding anything to the contrary in this Site Lease or the Agreement, Lessor and Lessee acknowledge and agree that the System is not a fixture to the Property, and Lessor agrees that it will not claim, assert, or assist any other entity in claiming or asserting that the System is a fixture to the Property. For the avoidance of doubt, the Lessor and Lessee acknowledge and agree that the System is the personal property of the Lessee.

**Section 8. Required Approvals.** Lessee's ability to use the Premises is expressly contingent upon Lessee obtaining, after the Effective Date, all certificates, permits, licenses and other approvals (collectively the "**Required Approvals**") that may be required by any federal, state, or local authorities, for the Permitted Use of the Premises. Lessor shall cooperate with Lessee in its effort to obtain such Required Approvals and shall take no action which would adversely affect the status of the Premises with respect to the Permitted Use by Lessee. Lessor hereby gives its consent to any action taken by Lessee in applying for any and all Required Approvals that are necessary or desirable for the construction and operation of the System, and Lessor hereby appoints Lessee as its agent and attorney-in-fact (coupled with an interest) for applying for such Required Approvals. Lessee will carry out the activities set forth in this Section 8 in accordance with all Applicable Laws and in such a manner as will not unreasonably interfere with Lessor's

operation or maintenance of the Premises. In furtherance of the foregoing, the Parties acknowledge and agree that Lessee's ability to use the Premises is expressly contingent upon its obtaining Required Approvals in accordance with Section 3.1(b) of the Agreement.

**Section 9. Maintenance and Security.**

(a) The Parties shall have the maintenance and security responsibilities for the Premises assigned to them under the Agreement.

**Section 10. Removal.** The Parties shall comply with the terms for removal of the System as set forth in the Agreement.

**Section 11. Section 11. Event of Default.** An "*Event of Default*" means, the occurrence of any of those matters described in Article 8 of the Agreement as an Event of Default or the failure to perform any covenant or obligation set forth in this Site Lease if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the Non-Defaulting Party (provided that so long as the Non-Defaulting Party has initiated and is diligently attempting to effect a cure, such cure period shall be extended for an additional period not to exceed ninety (90) days so long as such extension does not have a material adverse effect on the Non-Defaulting Party).

**Section 12. Remedies.** Upon an Event of Default hereunder, the Non-Defaulting Party shall have the same remedies (with respect to this Site Lease) as provided to it in the Agreement (with respect to the Agreement).

**Section 13. Casualty and Insurance.**

(a) Lessor and Lessee shall maintain all insurance policies as required under the Agreement.

**Section 14. Condemnation.**

(a) If only a part of the Premises is taken by eminent domain or otherwise by way of condemnation such that the balance of the Premises remain suitable for the Permitted Use as reasonably determined by Lessee, then the Site Lease shall not terminate and the Lessor shall exercise commercially reasonable efforts to modify the Premises as necessary to return them as closely as possible to their condition prior to such taking; *provided, however*, if such taking causes a material interference with Lessee's Permitted Use of the Premises, then the Parties shall meet to discuss a mutually agreeable alternative under this Site Lease to determine if Lessee's Permitted Use can still be accommodated, the Agreement can remain in full force and effect, and Lessee can still sell and deliver the Energy Output to Lessor thereunder.

(b) If all or a substantial part of the Premises are taken by eminent domain or otherwise by way of condemnation so as to render the use of the Premises unsuitable for the Permitted Use as reasonably determined by Lessee, then either Party may elect to terminate this Site Lease on not less than thirty (30) days' prior written notice to the other Party, upon which this Site Lease shall terminate and be of no further force or effect (except for those provisions which survive such termination as provided herein) on the date specified in such notice, subject to the Removal Period. If neither Party elects to terminate this Site Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to modify the Premises as necessary to return them as closely as possible to their condition prior to such taking, except that Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility.

(c) Lessor and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion the Premises shall belong to Lessor and (ii) all condemnation awards payable in connection with the System, any System Asset or the termination of the Site Lease or the Agreement due to condemnation of the Premises, shall belong to Lessee.

**Section 15. Compliance with Laws.** During the Site Lease Term, Lessor shall maintain the Premises in compliance with all Applicable Laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including the ADA and laws regulating Hazardous Materials) relating to the Premises. Lessee shall comply in all material respects with all Applicable Laws relating to the System and Lessee's Permitted Use of the Premises.

**Section 16. Liens.** Consistent with the requirements and obligations in the Agreement, including the indemnification of Lessor, in connection with its construction, ownership, operation and maintenance of the System, Lessee shall not file (nor permit to be filed by any of its representatives, employees, contractors, subcontractors, consultants or affiliates) any mechanics' or materialmen's liens or stop notices on all or any portion of the Property (including the Premises). Any such mechanics' or materialmen's liens or stop notices filed in violation of this Section 16 will be removed in accordance with the notice and cure provisions herein and shall not constitute an Event of Default under this Site Lease.

**Section 17. Non-Disturbance Agreement.** To the extent that any third party has or gains any interest in the Premises or any other claim, lien, encumbrance or right of possession on or against the Premises, Lessor will promptly obtain a subordination, non-disturbance and attornment agreement, in a form mutually acceptable to Lessee and any such third party in order to evidence: (i) the consent of such third party, their successors and assigns, to be bound by the terms of the Site Lease and the transactions contemplated herein as a succeeding lessor subsequent to any transfer of or foreclosure on the Premises for the remaining term of the Site Lease; (ii) the acknowledgement by such third party, their successors and assigns, of the continuing right, title and interest of Lessee in and to the Premises and the System without disturbance for the term of the Site Lease; and (iii) the waiver by such third party, their successors and assigns, of any lien or other interest in the System for the term of the Site Lease.

**Section 18. Liability and Indemnity.**

(a) The Parties hereby acknowledge and agree to the indemnification provisions in the Agreement, and further agree that such provisions shall be applicable to this Site Lease.

**Section 19. Assignment.**

(a) Neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties, or obligations under this Site Lease without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, the sale, assignment transfer or disposition, directly or indirectly of any type to an affiliate of Lessee or which is the result of a change of control of Lessee, shall not be deemed an assignment of this Site Lease. Change of control shall be defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer of more than fifty percent (50%) of the voting stock or equity interests of Lessee.

(b) Subject to the foregoing restrictions on assignment, this Site Lease will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(c) In addition, Lessor agrees as follows:

(i) Regardless of whether the System or any part thereof, contrary to the intent of the Parties hereto, is deemed to constitute a fixture on the Premises, Lessor hereby waives, disclaims and agrees not to assert any lien it may have, by operation of law or otherwise, in and to the System. Lessor further agrees to obtain a written agreement from any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder, acknowledging the existence of and agreeing to be bound by the foregoing



waiver of any such lien, which shall also be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Lessee's Financing Parties.

(ii) Lessor waives all right of levy for rent and all claims and demands of every kind against the System. Lessor agrees that the System shall not be subject to distraint or execution by, or to any claim of, Lessor.

(iii) Lessor hereby irrevocably agrees to refrain from taking any action to bar, restrain, or otherwise prevent Lessee's Financing Parties from accessing the Premises and the Property for the purpose of inspecting the System or the Financing Parties' rights to exercise remedies.

(iv) Lessor shall provide such cooperation and further assurances in connection with Lessee's financing for the System as may be reasonably requested by Lessee. Without limiting the generality of the foregoing, within twenty (20) business days of Lessee's written request, Lessor shall execute and deliver to Lessee a written consent for the benefit of Lessee's Financing Parties and consenting to such Financing Parties' security interest in the System and in this Site Lease, with such changes as may be reasonably requested by such Financing Parties

**Section 20. Financing.** Notwithstanding anything else in this Site Lease to the contrary, including, without limitation, the terms of Section 19, Lessor acknowledges and agrees that Lessee may finance the acquisition and installation of the System through a loan, lease, or partnership from or with one or more third parties and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Site Lease and a first security interest in the System. To facilitate any such transaction, Lessor (a) consents to the collateral or full assignment by Lessee to its Financing Parties of Lessee's right, title and interest in and to this Site Lease and the System, (b) agrees to take any reasonable actions and provide any documentation reasonably requested by Lessee in connection with such a transaction, and (c) will use commercially reasonable efforts to place its successors and assigns on notice of the ownership of the System by Lessee, the existence of the security interest, and the fact that the System is not part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

**Section 21. Jurisdiction; Disputes.** The Parties hereby acknowledge and agree to the governing law and dispute resolution provisions in the Agreement, and further agree that such provisions shall be applicable to this Site Lease.

**Section 22. Notices.** All notices, requests, statements or payments under this Site Lease will be made to the addresses and persons specified in Section 17.1 of the Agreement in accordance with the terms and conditions therein provided.

**Section 23. Taxes.** Lessee shall pay all personal property taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's ownership and/or use and operation of the System (or any portion or component thereof), except any (i) real property taxes (other than possessory interest taxes, which Lessee shall pay if levied on its leasehold interest in the Premises) (ii) personal property taxes relating to the Lessor's Property which is not a part of the Premises, and (iii) taxes computed upon the basis of the net income or payments derived from the Property by Lessor or the owner of any interest therein. Lessor shall be responsible for all applicable amounts in connection with clauses (i) through (iii) of this Section 23. Lessor disclaims any right, title or interest in and to all tax credits, tax incentives or tax related grants or benefits relating to the System, which are, and shall remain, the exclusive property of Lessee.

**Section 24. Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing by the waiving Party. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, shall be construed, operate as or constitute a consent to, waiver of or excuse of any other or subsequent or succeeding breach by either Party.

**Section 25. Recording.** Lessor shall concurrently herewith execute a memorandum of this Site Lease, in the form attached hereto as Exhibit E, which Lessee shall promptly record with the appropriate recording officer. Lessee shall be entitled to, and is hereby authorized to, file one or more precautionary UCC financing statements and/or precautionary fixture filings or similar documents in such jurisdictions as it deems appropriate with respect to the System in order to provide notice of its ownership of the System.

**Section 26. Governing Law.** This Site Lease will be governed by the laws of the State of California, without giving effect to principles of conflicts of laws. The Parties agree that this Site Lease is made in and will be performed in Tulare County, California.

**Section 27. Brokerage Commissions.** Lessor and Lessee have dealt directly as principals and neither Party has knowledge of any brokerage commission claimed or payable as a result of the execution of this Site Lease.

**Section 28. Severability.** If any part, term, or provision of this Site Lease is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Site Lease, and shall not render this Site Lease unenforceable or invalid as a whole.

**Section 29. Counterparts.** This Site Lease may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Site Lease received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Site Lease as of the Effective Date.

"LESSEE:"

**CALIFORNIA SOLAR 1, LLC**

a Delaware limited liability company

By: *Mikram Kulkarni* By: \_\_\_\_\_

Name: Mikram Kulkarni Name: \_\_\_\_\_

Title: Vice Pres. Title: \_\_\_\_\_

Date: 10-11-18 Date: 10-11-18

[Pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

"LESSOR:"

**COUNTY OF TULARE**

By: *J. Steven Worthley*  
J. Steven Worthley  
Chairman, Board of Supervisors

Date: 10/23/2018

ATTEST: MICHAEL C. SPATA  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By: *Mary Ravello*  
Deputy Clerk

Date: 10/23/2018



Approved as to Form:  
County Counsel

By: *Joseph Land*  
Deputy

Date: 10-22-18

Matter # 20171102

**EXHIBIT A**

**SYSTEM DESCRIPTION**

Supplier will cause EPC Contractor to design, engineer, and install photovoltaic power generating systems (System) at the Premises as provided in the table below:

Solar Generating Facilities to be Installed

Facility	Address	Approximate System Size (kW DC)
Tulare Akers Professional Center	5300 W. Tulare Ave., Visalia, CA 93277	1,123.2

EPC Contractor will design-build a carport photovoltaic system located in the Tulare Akers Professional Center parking lot. The system size noted in the table above is approximate and may be adjusted during final engineering. A preliminary layout of the solar project is given in Exhibit C.



**EXHIBIT B**

**LEASED LAND**

**TULARE AKERS PROFESSIONAL CENTER**

**Street Address:** 5300 W. Tulare Ave., Visalia, CA 93277

**Portion of Tulare County APN:** 087-460-007-000 (Affects Parcel 1) and 087-460-008-000 (Affects Parcel 2)

**Legal Description:**

BEING PORTIONS OF PARCEL 2 OF PARCEL MAP No. 4404 RECORDED AUGUST 26, 1999 IN BOOK 45 OF PARCEL MAPS AT PAGE 9 OF OFFICIAL RECORDS IN THE OFFICE OF THE TULARE COUNTY RECORDER. ALSO BEING PORTIONS OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 18 SOUTH, RANGE 24 EAST, MOUNT DIABLO MERIDIAN, IN THE CITY OF VISALIA, COUNTY OF TULARE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**LEGAL DESCRIPTION OF ARRAYS A1, A2, AND A3**

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 2 OF SAID PARCEL MAP No. 4404, SAID POINT BEING MARKED BY A ¾" IRON PIPE TAGGED "PLS 4714" PER SAID PARCEL MAP; THENCE NORTH 00°00'42" EAST ALONG THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 130.46 FEET; THENCE AT A RIGHT ANGLE SOUTH 89°59'18" EAST, A DISTANCE OF 59.50 FEET TO THE POINT OF BEGINNING;

- (1) THENCE NORTH 00°00'42" EAST, PARALLEL WITH THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 166.41 FEET;
- (2) THENCE SOUTH 89°59'18" EAST, A DISTANCE OF 143.61 FEET;
- (3) THENCE SOUTH 00°00'42" WEST, A DISTANCE OF 166.41 FEET;
- (4) THENCE NORTH 89°59'18" WEST, A DISTANCE OF 143.61 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED AREA CONTAINS 23,898 SQUARE FEET MORE OR LESS.

**LEGAL DESCRIPTION OF ARRAYS A4 AND A6**

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 2 OF SAID PARCEL MAP No. 4404, SAID POINT BEING MARKED BY A ¾" IRON PIPE TAGGED "PLS 4714" PER SAID PARCEL MAP; THENCE NORTH 00°00'42" EAST ALONG THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 324.74 FEET; THENCE AT A RIGHT ANGLE SOUTH 89°59'18" EAST, A DISTANCE OF 48.00 FEET TO THE POINT OF BEGINNING;

- (1) THENCE NORTH 00°00'42" EAST, PARALLEL WITH THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 615.69 FEET;
- (2) THENCE SOUTH 89°59'18" EAST, A DISTANCE OF 99.55 FEET;
- (3) THENCE SOUTH 00°00'42" WEST, A DISTANCE OF 502.80 FEET;

- (4) THENCE NORTH 89°59'18" WEST, A DISTANCE OF 59.39 FEET;
- (5) THENCE SOUTH 00°00'42" WEST, A DISTANCE OF 112.89 FEET;
- (6) THENCE NORTH 89°59'18" WEST, A DISTANCE OF 40.16 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED AREA CONTAINS 54,587 SQUARE FEET MORE OR LESS.

**LEGAL DESCRIPTION OF ARRAYS A5**

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 2 OF SAID PARCEL MAP No. 4404, SAID POINT BEING MARKED BY A ¾" IRON PIPE TAGGED "PLS 4714" PER SAID PARCEL MAP; THENCE NORTH 00°00'42" EAST ALONG THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 330.84 FEET; THENCE AT A RIGHT ANGLE SOUTH 89°59'18" EAST, A DISTANCE OF 107.39 FEET TO THE POINT OF BEGINNING;

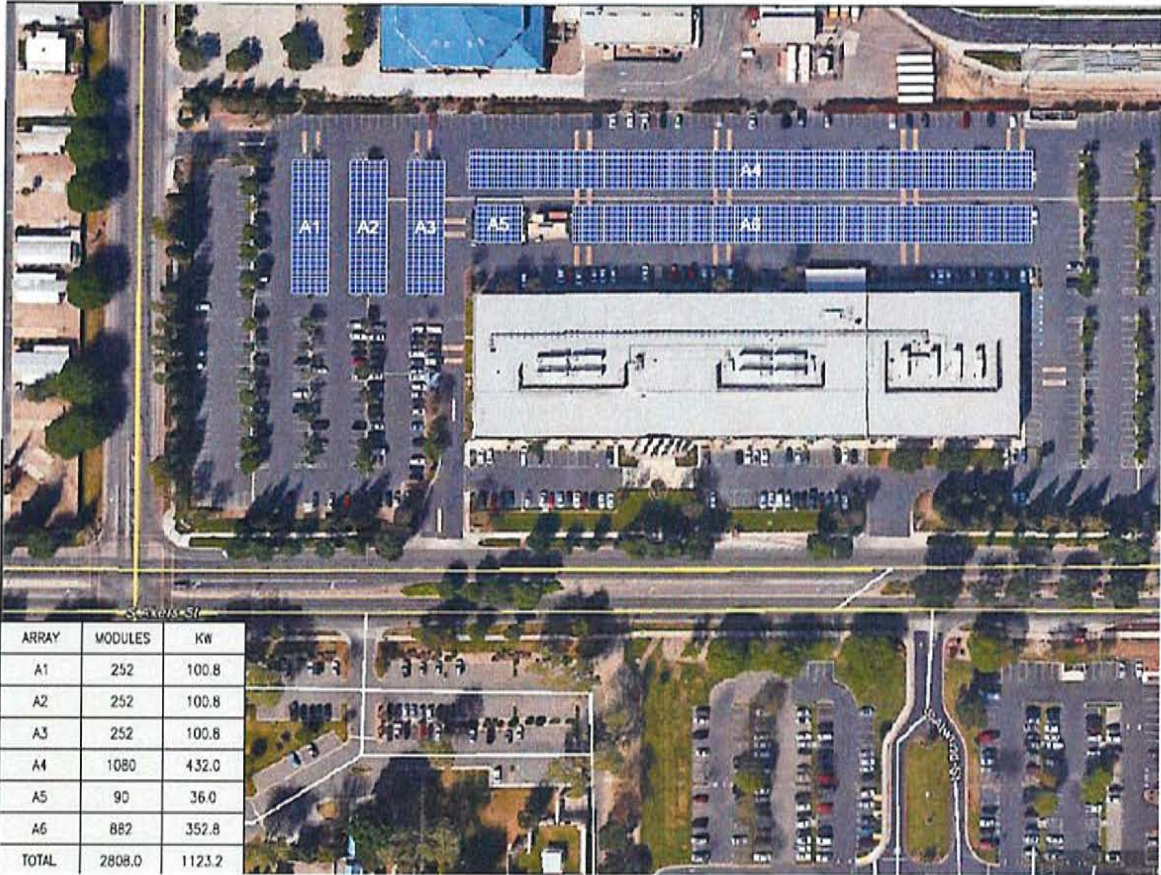
- (1) THENCE NORTH 00°00'42" EAST, PARALLEL WITH THE WEST BOUNDARY LINE OF SAID PARCEL 2, A DISTANCE OF 51.25 FEET;
- (2) THENCE SOUTH 89°59'18" EAST, A DISTANCE OF 40.16 FEET;
- (3) THENCE SOUTH 00°00'42" WEST, A DISTANCE OF 51.25 FEET;
- (4) THENCE NORTH 89°59'18" WEST, A DISTANCE OF 40.16 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED AREA CONTAINS 2,058 SQUARE FEET MORE OR LESS.

  
09/17/18



**EXHIBIT C**  
**PREMISES**



**Street Address:** 5300 W. Tulare Ave., Visalia, CA 93277

**Portion of Tulare County APN:** 087-460-007-000 (Affects Parcel 1) and 087-460-008-000 (Affects Parcel 2)

**EXHIBIT D**

**PROPERTY**

**Tulare Akers Professional Center**

**Street Address:** 5300 W. Tulare Ave., Visalia, CA 93277

**Legal Description**

Real property in the City of Visalia, County of Tulare, State of California, described as follows:

PARCELS NO. 1 AND 2 OF PARCEL MAP NO. 4404 RECORDED AUGUST 26, 1999 IN BOOK 45, PAGE 9 OF PARCEL MAPS, IN THE OFFICIAL RECORDS OF TULARE COUNTY, CALIFORNIA.

APN: 087-460-007-000 (Affects Parcel 1) and 087-460-008-000 (Affects Parcel 2)



**EXHIBIT E**  
**PERMITTED LIENS**

1. General and special taxes and assessments for the fiscal year 2018-2019, a lien not yet due or payable.
  2. General and special taxes and assessments for the fiscal year 2017-2018 are exempt.
  3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
  4. An easement for WATER DITCH and incidental purposes, recorded in Book 914 of Deeds, Page 354.  
In Favor of: PERSIAN DITCH COMPANY  
Affects: AS DESCRIBED THEREIN  
The location of the easement cannot be determined from record information.
  5. An easement for POLES AND POLE LINES and incidental purposes, recorded OCTOBER 03, 1991 as INSTRUMENT NO. 68337 of Official Records.  
In Favor of: PACIFIC BELL, A CORPORATION  
Affects: AS DESCRIBED THEREIN
  6. An easement for PUBLIC UTILITIES and incidental purposes, recorded SEPTEMBER 24, 1996 as INSTRUMENT NO. 96-068810 of Official Records.  
In Favor of: SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION,  
ITS SUCCESSORS AND ASSIGNS  
Affects: AS DESCRIBED THEREIN
  7. An easement shown or dedicated on the Map as referred to in the legal description For: ACCESS, SIDEWALK, SEWER AND STORM DRAIN and incidental purposes.
  8. An easement for PUBLIC UTILITIES and incidental purposes, recorded MARCH 08, 2000 as INSTRUMENT NO. 2000-0013881 of Official Records.  
In Favor of: PACIFIC BELL, A CALIFORNIA CORPORATION  
Affects: AS DESCRIBED THEREIN
- A document entitled "NOTICE OF FINAL DESCRIPTION" recorded MAY 10, 2000 as INSTRUMENT NO. 2000-0028802 of Official Records.
9. An easement for PUBLIC UTILITIES and incidental purposes, recorded APRIL 05, 2000 as INSTRUMENT NO. 2000-0020976 of Official Records.  
In Favor of: SOUTHERN CALIFORNIA EDISON COMPANY. A CORPORATION. ITS SUCCESSORS AND ASSIGNS  
Affects: AS DESCRIBED THEREIN  
(Affects PARCEL 2)

10. The terms, provisions and easement(s) contained in the document entitled "GRANT OF EASEMENT" recorded MAY 25, 2000 as INSTRUMENT NO. 2000-0033079 of Official Records.
11. An easement for ROAD, UTILITY, SIDEWALK and incidental purposes, recorded JUNE 06, 2001 as INSTRUMENT NO. 2001-0042006 of Official Records.  
In Favor of: CITY OF VISALIA, A MUNICIPAL CORPORATION  
Affects: AS DESCRIBED THEREIN  
(Affects PARCEL 1)
12. The terms, provisions and easement(s) contained in the document entitled "GRANT OF EASEMENT" recorded APRIL 03, 2002 as INSTRUMENT NO. 2002-0025153 of Official Records.  
(Affects PARCEL 2)
13. Rights of the public in and to that portion of the land lying within any Road, Street, Alley or Highway.  
(Affects PARCEL 1)
14. Water rights, claims or title to water, whether or not shown by the public records.
15. Rights of parties in possession.

**EXHIBIT F**

**MEMORANDUM OF LEASE**

**[Subject to revisions based on jurisdictional requirements]**

This instrument prepared by and  
When recorded should be mailed to:

California Solar 1, LLC  
1990 Post Oak Boulevard, Suite 1900  
Houston, TX 77056  
Attn: General Counsel

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

**MEMORANDUM OF SITE LEASE AGREEMENT**

Lessor: County of Tulare, California  
Lessee: California Solar 1, LLC (or Assignee)  
Assessor's Parcel No.: \_\_\_\_\_  
Property Address: \_\_\_\_\_

THIS MEMORANDUM OF SITE LEASE AGREEMENT (the "**Memorandum**") is dated for reference purposes only as of \_\_\_\_\_, 2018 and is made by and between County of Tulare, California, a political subdivision of the State of California ("**Lessor**"), with a mailing address of 2800 W. Burrell Avenue, Visalia, CA 93291 and CALIFORNIA SOLAR 1, LLC, a Delaware limited liability company ("**Lessee**") having its offices located at 1990 Post Oak Boulevard, Suite 1900, Houston, TX 77056. Lessor and Lessee are at times collectively referred to herein individually as the "**Party**" and collectively as the "**Parties.**"

The Parties agree as follows:

**Section 1. Site Lease Term.** Lessor and Lessee have entered into a Solar Power Purchase and Energy Storage Services Agreement dated as of \_\_\_\_\_, 2018 (the "**Agreement**") whereby Lessee has agreed to construct, install, own, operate and maintain a solar energy facility on the Premises described in **Section 2** below. Lessor and Lessee have also entered into a Site Lease Agreement (the "**Site Lease**") as of \_\_\_\_\_, 2018 (the "**Effective Date**"), dated for a term which shall commence on the Effective Date and shall coincide with the term of the Agreement, *provided that* the Lessee may have an additional period following the term of the Site Lease to remove the solar energy generation equipment and related equipment (the "**System**") from the Property as set forth in the Site Lease. The Agreement is for a term of [\_\_\_\_\_] years after the Final Commercial Operation Date as defined in the Agreement and may be extended upon mutual agreement by the Lessor and Lessee. The Site Lease shall terminate automatically upon termination or expiration of the Agreement, unless earlier terminated or extended pursuant to any provision of the Site Lease.

**Section 2. Leased Premises.** Lessor leases to Lessee and Lessee leases from Lessor certain real property which is legally described in the *Description of Property* attached hereto as **Exhibit A** (the "**Leased Land**") (and such real property are hereinafter sometimes collectively referred to as the "**Property**"), for the de-

sign, installation, operation, maintenance, repair, replacement and improvement of a solar electric generating facility that produces electrical energy to be purchased by Lessor pursuant to the Agreement, including, but not limited to, solar energy panels, mounting systems, inverters, integrators and other related equipment more particularly described in the *System Description* attached hereto as Exhibit B and by this reference incorporated herein (collectively, the "**System**") together with all electrical lines required to transmit electrical energy generated by the System to the delivery point at which electrical energy is to be delivered and received under the Agreement (the "**Interconnection Point**"), together with such additional space for the installation, operation and maintenance of utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances (collectively, the "**Cabling Space**") running between and among the Leased Land, the Interconnection Point, and all necessary electrical and other utility sources located on the Property, together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property and to and from the Premises (as hereinafter defined) for the purpose of design, installation, operation, inspection, maintenance, repair and improvements of the System. The Leased Land, the Interconnection Point and the Cabling Space are hereinafter collectively referred to as the "**Premises.**"

**Section 3. Installation and Ownership of System and System Assets.**

(a) Lessee shall have the right to install the System and all related transmission lines, cables, fixtures and utilities (collectively, the "**System Assets**") within the Premises and to make such other installations on the Premises as may be reasonably necessary or desirable in connection with Lessee's operation of the System in compliance with the terms of the Agreement and all Applicable Laws. Lessor has granted Lessee the right to temporarily use additional space immediately adjacent to the Premises during installation, maintenance, repair, replacement, improvement or removal of the System and other System Assets on the Premises, provided that Lessee provides reasonable notice to Lessor of its intent to temporarily use the space and Lessee takes reasonable efforts not to impact Lessor's normal course of business. Lessee shall have the right at any time and from time to time to repair, replace, remove, improve, enhance, relocate or replace the System and other System Assets or any portion thereof with new or different items with the same or different specifications so long as the installation of such System and other System Assets is otherwise in compliance with the Site Lease, the Agreement, and all Applicable Laws.

(b) Lessor shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Lessee installed on the Premises and Lessee may remove all or any portion of the System or any System Assets at any time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, Lessor hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof.

(c) The lien of any third party mortgagee, deed holder, or party to any security document shall not cover the System, any System Assets or Lessee's moveable trade fixtures or other personal property of Lessee located in or on the Premises.

(d) Notwithstanding anything to the contrary in the Agreement or Site Lease, Lessor and Lessee acknowledge and agree that the System is not a fixture and Lessor agrees that it will not claim, assert, or assist any other entity in claiming or asserting that the System is a fixture. Lessee will have the right to remove the System in accordance with the Agreement.

**Section 4. Provisions Binding on Lessor and Lessee.** All of Lessor and Lessee's obligations under the Site Lease, both affirmative and negative, are intended to and shall be binding on Lessor and Lessee, respectively, in accordance with their terms and shall be binding on their respective successors and permitted assigns and shall inure to the benefit of the Parties thereto and their respective successors and permitted



assigns. All capitalized terms not otherwise defined herein shall have the same definition as set forth in the Site Lease or if not defined therein, as defined in the Agreement.

**Section 5. Purpose of Memorandum.** This Memorandum is prepared for the purpose of recordation only to give third parties notice of the Site Lease. It shall not constitute an amendment or modification of the Site Lease and in the event of any conflict between the terms and provisions of the Agreement or the Site Lease and this Memorandum, the terms and provisions of the Agreement, first, and then the provisions of the Site Lease shall control.

[SIGNATURE BLOCKS AND EXHIBITS EXCLUDED]