**SOLAR POWER PURCHASE AGREEMENT**

This Solar Power Purchase Agreement (“PPA”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_ \_\_, 2023 (“Effective Date”), by and between NOBELL Energy Solutions, LLC, a California limited liability company (“Power Provider”) and Northshore Fire Protection District, a California public entity (“Host Customer”). Each of Power Provider and Host Customer shall be referred to herein as a “Party” and collectively, as the “Parties”.

**RECITALS**

**WHEREAS,** Host Customer owns and operates fire stations located on the real property identified by the municipal addresses of:

* 77 Tamarak Way, Clearlake Oaks, California, and
* 3600 Hill Road, Lakeport, California, and
* 3708 Manzanita Drive, Nice, California, and
* 6257 7th Avenue, Lucerne, California, and
* 9420 Main Street, Upper Lake, California, and
* 12655 State Highway 20, Clearlake Oaks, California (“Property”); and

**WHEREAS**, Host Customer desires to have installed a 128 kW DC roof mounted solar photovoltaic power generation system in accordance with the specifications set forth in this PPA (“System”) on the Property in order to reduce its energy costs as well as its dependence on fossil fuel resources and to promote the generation of electricity from solar energy; and

**WHEREAS**, Host Customer and Power Provider have agreed to enter into a lease, which is attached hereto as Exhibit “A” (“Site Lease”) for that portion of the Property where the System will be located (the “Site”); and

**WHEREAS**, Power Provider has developed an ownership and financing structure as set forth in this PPA under which the Power Provider will design, install, own, operate, and maintain the System at no cost to Host Customer so long as Host Customer agrees to buy all the electricity generated from the System in accordance with the terms and conditions set forth in this PPA; and

**WHEREAS,** as part of this PPA and in consideration of the Site Lease, Power Provider and Host Customer intend that Power Provider will retain and be the beneficiary of all environmental credits (green tags), carbon credits, pollution credits, and all the other financial incentives and tax benefits generated by the development, operation, and ownership of the System.

**NOW, THEREFORE**, in consideration of the terms and conditions hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

**AGREEMENT**

1. **POWER PROVIDER’S DUTIES**
   1. Construction of System. Power Provider shall have access to the Site to install, construct, test, service, maintain, and repair the System in accordance with the specifications and description set forth in Exhibit “B” attached hereto and incorporated herein on mutually agreeable date and time. The Power Provider must obtain the Host Customer’s written approval of the System’s designs, plans and specifications prior to submitting such design, plans and specifications to the applicable governmental authorities for plan check, if applicable, and approval. Power Provider may not hire licensed, independent contractors to design, build, and install the System without express written approval of the Host Customer, which approval shall not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, such independent contractors may use subcontractors for any part or all of the services contracted by Power Provider without the prior approval of Host Customer. Power Provider shall be responsible for supervising the independent contractors and their subcontractors and shall be responsible for the acts and omissions of the independent contractors and their subcontractors. Notwithstanding the foregoing, Power Provider will remain solely responsible to Host Customer for all work performed by such independent contractors and subcontractors. Power Provider and its contractors and subcontractors shall install the System in good and workmanlike manner. Power Provider will maintain and repair the System in a good and operable condition at all times hereunder which shall include cleaning the system consistent with Prudent Industry Practice (defined in Section 7.1 herein below). Subject to the provisions of Section 8 and Section 12, if the System is damaged or destroyed for any reason, including theft, vandalism or other casualty, Power Provider shall be responsible to repair or replace the same as soon as reasonably practicable thereafter.
   2. Removal of System. Power Provider shall remove all of the System from Host Customer’s Property at Power Provider’s sole expense: (i) upon the expiration of the Term, including the renewal Term; or (ii) in the event that this PPA is terminated pursuant to Section 7.
   3. Compliance with Laws. Power Provider shall ensure that the e System shall conform with all Applicable Laws (as defined in Paragraph 2.4.5 hereinbelow), regulations and orders, including, without limitation, obtaining all permits or approvals required by any governmental entity. At no expense to Host Customer, Host Customer shall reasonably cooperate with Power Provider in obtaining any and all permits or approvals required by any Governmental Authority.
   4. Delivery of Electricity from Solar Panels to Host Customer. Power Provider shall provide all wiring from the System to the point at which the System connects to the Host Customer’s existing building electrical system (“Connection Point”) as identified in Exhibit “B” attached hereto and incorporated herein. Custody, control and ownership of electricity shall transfer from the Power Provider to the Host Customer at the Connection Point.
   5. Interruptions in Delivery of Electricity. Power Provider may interrupt, reduce or discontinue the delivery of electricity for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of electricity. No such interruption shall last more than twenty-four (24) hours except for extraordinary or unanticipated repairs without the prior consent of Host Customer, which consent will not be unreasonably withheld, conditioned or delayed. Power Provider shall use commercially reasonable efforts to give written notice to Host Customer of any expected interruption of delivery of electricity at least five (5) business days prior to the date of any interruption and shall use its commercially reasonable efforts to inform Host Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Host Customer. Power Provider reserves the right to curtail the delivery of electricity if so directed by authorized governmental authorities, electric utilities or as necessitated by an emergency or immediate risk to the health and safety of persons or destruction of property. Power Provider shall use reasonable care to ensure the operation of the System and supply of electricity. However, the Parties explicitly acknowledge and understand that the System is comprised of intermittent generation facilities, and will not provide Host Customer with an uninterrupted supply of electricity at all times.
   6. Repairs and Other System Disruptions. Given the duration of the Term of this PPA, the Parties agree and expect that the Host Customer shall undertake repairs of its property, but not the System, during the term of this PPA. As such, the Parties agree that during the term of this PPA, Host Customer shall be afforded a total of thirty (30) working days during the Term (“Repair Time”) during which Host Customer may repair the Property and during which the System shall be removed and/or rendered non-operational as safety may so require in order for Host Customer to effectuate the repair. Such Repair Time shall not include Power Provider’s time incurred to partially or completely disassemble and/or move the System as may be required by Host Customer to make repairs. Power Provider shall charge Host Customer for its costs incurred to disassemble or move the System for repairs/replacement work undertaken by Host Customer during the Repair Time. Host Customer shall not be obligated to make any payment to Power Provider during the Repair Time. In the event that Host Customer requires more time beyond the Repair Time (“Disruption Period”), Host Customer shall (i) pay Provider for all work required by Provider to disassemble or move the System; (ii) continue to make all Monthly Payments; and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits. For the purpose of calculating lost revenue for such Disruption Period, electricity shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). This section shall not be applicable for any repairs by Host Customer that do not require the system to be removed and/or rendered non-operational, in which case, the Host Customer shall be entitled to make such repairs for unlimited days.
   7. Cost to Restore Service Following Interruption. Power Provider shall bear all costs associated with restoring service following any interruption of electricity as part of Power Provider’s operation of the System; provided, however, that, if interruptions of electricity are caused directly by the actions or inactions of Host Customer, including but not limited to, Host Customer’s additional repairs contemplated in the above-defined Disruption Period, then Host Customer agrees to bear the costs associated with the restoration of the delivery of electricity.
   8. Ownership of System, Renewable Energy Credits and Environmental Financial Attributes. Ownership of the System shall vest in Power Provider for all purposes including depreciation and credits for federal and state tax purposes. Host Customer and Power Provider agree that the System shall at all times be personal property severable from the Property and shall not become a fixture. The Power Provider shall own all “Renewable Energy Credits” and all “Environmental Financial Attributes” relating to the System or the electricity generated by the System. “Renewable Energy Credits” shall mean those certificates (including Tradable Renewable Certificates), green-e tags, pollution credits, carbon offset credits, or other transferable indicia used to control pollution by providing economic incentives for achieving reductions in the emissions of pollutants, or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the electricity during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority (as defined in Paragraph 2.4.5 hereinbelow), or for which a registry and a market exists (including but not limited to, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time. “Environmental Financial Attributes” shall mean all of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future, excluding, however, any Renewable Energy Credits: (i) performance-based incentives under the California Solar Initiative, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such allowances.
      1. Reporting of Ownership. Host Customer shall not report to any person that any Environmental Financial Attributes or the Renewable Energy Credits relating to the electricity generated by the System and/or the System belong to any person other than Power Provider. At the Power Provider’s request, Host Customer shall execute all such documents and instruments reasonably necessary to effect or evidence Power Provider’s right, title and interest in and to the Environmental Financial Attributes or Renewable Energy Credits, as the case may be, relating to the System or the electricity generated therefrom, to the extent executing such documents and instruments do not adversely affect Host Customer’s rights under this PPA. If the standards used to qualify the Environmental Financial Attributes or Renewable Energy Credits to which such Party is entitled under this PPA are changed or modified, the Host Customer shall, at the Power Provider’s request and at no cost to Host Customer, use reasonable efforts to cause the Environmental Financial Attributes or Renewable Energy Credits to comply with new standards as changed or modified.
   9. Conditions to Power Provider’s Obligations. Subject to the terms and conditions of this PPA, each of the following conditions precedent is required prior to Power Provider’s obligations to: (a) commence construction and installation of the System; and (b) commence the delivery of electricity to Host Customer:
      1. Necessary Governmental Approvals. Power Provider shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the System; and (b) for the generation and sale of electricity to the Host Customer under this PPA, prior to the commencement of delivery of electricity to Host Customer.
      2. Additional Consents and Approvals. Power Provider shall have obtained from all Parties any necessary easements, leases/leasebacks, licenses, consents and approvals and other rights Power Provider reasonably deems necessary or desirable for the construction and installation of the System, the production and delivery of electricity to the Connection Point, and the operation and maintenance of the System under this PPA.
      3. Ownership of Approvals. All such permits and approvals in this Section 1.9 shall be owned and controlled by Power Provider. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will grant all material decision-making rights with respect to such permits and approvals to Power Provider subject to the applicable permitting authority’s conditions of approval and any applicable laws, provided, however, that there is no cost or expense to Host Customer.
      4. Diligence. Power Provider shall have had the opportunity to complete proper due diligence relating to Host Customer, including but not limited to legal, accounting, environmental and technical reviews. Such diligence shall also include visits by Power Provider to Host Customer’s Property, meetings between Power Provider’s management and Host Customer’s management, on mutually agreeable date and time.
      5. No Material Changes. Power Provider determines that Host Customer’s electricity requirements have remained consistent since the Effective Date of this PPA, and Host Customer shall not have experienced any other material changes, including changes in its load profile.
2. **HOST CUSTOMER’S DUTIES**
   1. No Obstruction of System. Host Customer shall not install or permit to be installed on the Property (or any other property owned or controlled by Host Customer) any physical obstruction (such as, but not limited to, trees) to the operation of the System that reduces the electrical energy generated by the System.
   2. Liens. Host Customer shall not cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to all or a part of the System or any of Power Provider’s interest therein. If Host Customer breaches its obligations under this Section, it shall immediately notify Power Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Power Provider, and shall defend and indemnify Power Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. Power Provider shall not cause, create, incur, assume or suffer to exist any Liens on or with respect to the Site, the Property or Host Customer’s interest therein. If Power Provider breaches its obligations under this Section, it shall immediately notify Host Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Host Customer, and shall defend and indemnify Host Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
   3. Access of Property. Power Provider will have the right to access the Site and the Property in accordance with the terms of the Site Lease, for the purposes of installing, constructing, servicing and testing the System, and any other activities related to or arising from the installation, maintenance and operation of the System.
   4. Electricity Purchases.
      1. Purchase and Sale of Electricity. In accordance with the terms and conditions herein, commencing on the Service Commencement Date (as defined in Paragraph 7.1 herein below) and continuing throughout the remainder of the Term (as defined in Paragraph 7.1 herein below), Power Provider shall deliver to the Host Customer at the Connection Point, and Host Customer shall accept delivery from Power Provider at the Connection Point, all of the electrical output generated by the System. The amount of electrical power delivered to the Connection Point from the System (“System Output”) shall be in whole kWh and determined in accordance with the provisions of Section 4 hereinbelow.
      2. Payments. Power Provider will invoice Host Customer each month in the manner set forth in Exhibit “C”. Host Customer shall pay the full Monthly Payment or any amounts owed pursuant to Section 9.1 within twenty-one (21) days of the invoice date from Power Provider for the prior month (“Due Date”). Host Customer shall, at Host Customer’s option, (a) cause a check to be drawn in the undisputed amount due made payable to the Power Provider, or (b) pay such amount via wire transfer to Power Provider’s bank account. Unless otherwise directed by Power Provider, all payments must be made payable to: Nobell Energy Solutions, 2045 E. Tahquitz Canyon Way, Palm Springs California 92262.
      3. Late Fees. If any part of a payment is not made by Host Customer within ten (10) calendar days following the Due Date, Power Provider shall provide twelve (12) days written notice to Host Customer regarding the overdue payment. If payment is not made by Host Customer within the twelve (12) days of the written notice, Host Customer agrees to pay Power Provider interest of ten (10) percent per annum on the amount past due (“Late Fee”) until the payment has been made in full. Host Customer agrees to pay Power Provider any Late Fees not later than one (1) month following the original Due Date. The calculation of Late Fees that remain unpaid as set forth in this section shall not constitute any waiver of Host Customer’s obligation to pay such amounts when due, or Power Provider’s right to collect, any payment by Host Customer under any such invoice, as well as Power Provider’s right to exercise its rights with respect to Host Customer’s Default.
      4. Changes in Applicable Law. In the event that any fee or charge (other than a tax as described in Section 9.1) is imposed on the delivery of electrical energy by Power Provider to Host Customer as a result in a change in Applicable Law, then Host Customer agrees to negotiate with Power Provider an equitable adjustment in the Solar Energy Price (as defined in Exhibit “C”) such that the new rate compensates Power Provider for the increased cost of such fee or charge, which adjustment shall remain in effect over the remaining years of the Term of this PPA or until the fee or charge that caused the increase in costs is altered, repealed, or made inapplicable to the System. Power Provider will not be entitled to any adjustment in the Solar Energy Price as a result of a change in Applicable Law which alters the value or applicability of the Renewable Energy Credits and Environmental Financial Attributes and accepts all risk associated with same. As used in this PPA, “Applicable Law” shall mean, with respect to Governmental Authority (defined as any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government), any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.
3. **REPRESENTATIONS.**
   1. Host Customer Representations. Host Customer hereby represents to Power Provider that:
      1. Due Authorization. Host Customer is duly authorized and empowered to enter into this PPA and Host Customer shall deliver to Power Provider certified copies of all ordinances, resolutions and other documents evidencing such authorization and empowerment to enter into this PPA;
      2. No Conflict. This PPA is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer licenses with respect to the Property;
      3. Host Customer Data. Host Customer has furnished, or caused others to furnish, to Power Provider accurate and complete data concerning energy usage for and other information pertaining to the Property, requested by Power Provider as follows:

(a) Utility and any other energy Power Provider records for the 12-month period preceding the Effective Date;

(b) Any energy or environmental audits relating to all or any part of the Property;

(c) Any service or maintenance agreement(s) regarding the building electrical system (“BES”) for the Property, or any part thereof; and

(d) Building structural plans/building system electrical designs as needed.

* + 1. Accuracy of Information. The information provided pursuant to this PPA as of the Effective Date is to the best of Host Customer’s actual knowledge true and accurate in all material respects;
    2. Ability to Perform. Without having conducted an investigation, Host Customer has no existing knowledge of any facts or circumstances regarding the property that, but for the passage of time, would materially, adversely affect either Party’s ability to perform its respective obligations hereunder and, if Host Customer is a governmental entity or instrumentality thereof, as set forth in the Recitals to this PPA, the Host Customer has complied with all laws and regulations relative to procurement of the electricity; and
    3. Control over Property. Host Customer has the authority to enter into the Site Lease attached hereto to lease or sublease the Property to Power Provider.

(a) In the event that any or all of the Property is or becomes subject during the Term of this PPA to a lease, or to a security interest, lien or mortgage, such agreement shall not conflict with Power Provider’s rights as provided hereunder whereby the System is the personal property of Power Provider severable from the Property and not a fixture.

(b) Host Customer shall, at no cost to Host Customer, grant to Power Provider requested easements, licenses, consents and approvals necessary for the production and delivery of electricity to the Connection Point, and the operation and maintenance of the System under this PPA.

* + 1. Hazardous Materials or Contamination. Host Customer, after due diligence, has no knowledge of any hazardous or toxic substances, materials or waste, including, without limitation, medical waste and asbestos (“Hazardous Materials”) or environmental contamination on or under the Site or the designated construction lay down areas. Power Provider may encounter Hazardous Materials when installing, servicing or maintaining the System. Power Provider shall not be responsible for any work relating to (i) the existence, use, transportation or treatment of Hazardous Materials, or (ii) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment of Hazardous Materials. In the event Power Provider encounters any Hazardous Material at the Property, Power Provider shall immediately cease any work in progress and immediately inform Host Customer of the nature and location of said Hazardous Materials. It shall then be Host Customer’s responsibility to eliminate or contain such Hazardous Materials in a commercially reasonable manner in compliance with law to allow Power Provider to continue or finalize any work in progress. Host Customer shall defend, indemnify and hold harmless the Power Provider and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses arising out of or caused by the Hazardous Material. Prior to seeking indemnification under this Paragraph 3.17, Power Provider shall first seek recovery from all other available sources of recovery or reimbursement applicable to losses suffered, including, without limitation, rights to indemnification from third parties and proceeds from insurance policies.
  1. Power Provider Representations. Power Provider hereby represents to Host Customer that:
     1. Due Authorization. Power Provider is duly authorized and empowered to enter into this PPA;
     2. No Conflict. This PPA is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party;
     3. Accuracy of Information. The information provided pursuant to this PPA as of the Effective Date is true and accurate in all material respects;
     4. Due Diligence. Power Provider is experienced in the installation of commercial solar photovoltaic energy generation systems, has carefully reviewed all of the Host Customer data as described in Section 3.1.3, and has made its own determination as to the adequacy of the structural integrity and electrical systems located on the Property and their suitability for the System. Subject to Host Customer’s representations and warranties made in this PPA or the Site Lease and Power Provider’s termination rights set forth in Section 7.3, Power Provider accepts the Property in its current condition “AS-IS” and the responsibility for any repairs or upgrades to the Property that are necessary to support the System that are not identified on Exhibit “B”; and
     5. Ability to Perform. Power Provider has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party’s ability to perform its respective obligations hereunder.

1. **METERING.**
   1. Metering Equipment. The Parties acknowledge and agree that Power Provider shall, or shall cause a third party to, provide, install, own, operate and maintain a meter on the Property with real time digital access that is accessible by Power Provider and Host Customer, and Power Provider shall, or shall cause a third party to, exercise reasonable care in the installation, operation, and maintenance of the meter so as to assure to the maximum extent reasonably practical an accurate determination of such quantities. The location of the meter shall be approved by Host Customer prior to its installation and shall be used for the purpose of measuring the System Output.
   2. Meter Reading. Readings of the meter shall be conclusive as to the amount of electricity generated by the System; provided that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4.3, or registers inaccurately, measurement of electricity generated by the System shall be determined by estimating by reference to quantities measured during periods of similar conditions when the meter was registering accurately. Power Provider shall use the data taken from the meter readings on a monthly basis to calculate a Monthly Payment under this PPA if it elects to not invoice Host Customer on a “Level Pay Plan” as set forth in Exhibit “C”.
   3. Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:
      1. If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.
      2. Power Provider shall, within fifteen (15) business days after receiving such notice from Host Customer or issuing such notice to Host Customer, advise Host Customer in writing as to Power Provider’s position concerning the accuracy of such meter and Power Provider’s reasons for taking such position.
      3. If the Parties are unable to resolve the dispute through reasonable negotiations, then Power Provider may cause a neutral, unrelated third party having considerable experience testing such meters and acceptable to Host Customer (whose consent shall not be unreasonably be withheld) to test the meter.
      4. If the meter is found to be inaccurate by not more than 2%, any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter shall bear the cost of inspection and testing of the meter.
      5. If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (a) Power Provider shall promptly cause any meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (b) Power Provider will pay the cost of inspection and testing of the meter; and (c) the Parties shall estimate the correct amounts of electricity delivered, based on usage during the previous calendar year, for no more than the preceding six (6) months and Power Provider shall either invoice or credit Host Customer for the correct amounts of electricity delivered.
2. **ENVIRONMENTAL COMPLIANCE.**

Power Provider shall comply with any and all applicable environmental laws relating to the installation and operation of the System and Host Customer shall comply with any and all applicable environmental laws relating to the Property (excluding the System installed thereon). The forgoing shall include, but shall not be limited to, the California Environmental Quality Act. If required to do so by an applicable governmental authority, each Party shall retain the services of qualified consultants to provide all required research and documentation required to meet its compliance obligations set forth in this Section 5. Host Customer shall be responsible for the costs of the initial study which may be required to install the System. Either Party, following the completion of such initial study, may terminate this PPA by written notice to the other Party should environmental compliance measures or unforeseen site conditions render the construction of the System economically disadvantageous for the terminating Party or the time required to implement any environmental compliance measures or remediation exceed the Party’s reasonable expectations. If Host Customer does not obtain all required environmental approvals by within six (6) months from the Effective Date, either Party may terminate this PPA by written notice to the other Party. Nothing set forth herein shall be interpreted to require either Party to undertake environmental remediation at the Property if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the System.

# SYSTEM.

* 1. Location. Host Customer and Power Provider agree that the System shall be situated on Host Customer’s Property at the locations specified in Exhibit “B”, attached hereto. Host Customer warrants that this PPA is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer leases, licenses or other agreements with respect to the Property. Host Customer also acknowledges and agrees that it is not the owner of the System and does not have title to the System. If any person other than Power Provider attempts to claim ownership of the System by asserting any claim against Host Customer or through Host Customer arising out of Host Customer’s acts or omissions, Host Customer agrees to protect and defend, at Host Customer’s expense, Power Provider’s title to the System. Host Customer acknowledges that this Agreement may be financed through a sale-leaseback transaction, in which case, the rights and obligations of a third party, other than Power Provider, shall be assumed via an assignment and assumption agreement to which Host Customer shall be a party and under which such agreement the third party shall assumes the duties and obligations under this PPA as provided for in the agreement.
  2. Ownership. During the Term of this PPA, ownership of (i) the System constructed by Power Provider upon the Property, (ii) all alterations, additions or betterments thereto shall vest in Power Provider for all purposes including depreciation for federal and state tax purposes. Host Customer and Power Provider agree that the System shall at all times be personal property severable from the Property and shall not become a fixture. Power Provider, or Power Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of all System, including the right to any tax credits available under federal or state law, and all System shall remain the property of Power Provider or Power Provider's assigns. Power Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. The Parties intend that neither Host Customer nor any party related to Host Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code of 1986, as amended, and the terms of this PPA shall be construed consistent with the intention of the Parties.
  3. Reduce Other Electric Purchases. The electricity generated by the System will reduce Host Customer’s purchase of electricity from other sources, including the Host Customer’s local utility. However, the System is not intended to eliminate entirely Host Customer’s electricity needs from other sources, and therefore, Host Customer shall have a contractual arrangement in place at all times during the Term of this PPA with its local electric utility or with another provider of retail electricity. Host Customer shall be responsible for maintaining and fulfilling all contractual obligations with respect to its utility service provider, including with respect to such interconnection service, power supply service, net-metering arrangements and delivery service, and, where applicable, meet all requirements imposed by the local utility. Depending on the Host Customer’s demand load profile, the electricity generated by the System may or may not eliminate applicable demand charges, including but not limited to, non-coincident demand charges, or any other component of the utility rate charged by the local utility which otherwise remains applicable to the Host Customer notwithstanding the Host Customer’s purchase of electricity generated by the System.
  4. Net-Metering. In the event that Host Customer’s load is less than the total output being delivered by Power Provider to the Connection Point at any given time, the Parties acknowledge and agree that such electricity shall have been delivered to Host Customer at the Connection Point in accordance with Section 1.4 and shall flow through the BES to the interconnection point between the BES and the local utility. The Parties further acknowledge and agree that in such instance, the treatment of such electricity shall be determined by arrangements between Host Customer and its local utility (which arrangements are typically referred to as “net-metering”), which shall have no impact whatsoever upon the terms and conditions of this PPA. Host Customer acknowledges that the amount of electrical power subject to net-metering is dependent on many factors, including, but not limited to, the Host Customer’s operating hours, changes to the amount of electrical power used by Host Customer, conservation measures, and weather conditions.
  5. Alteration of Power Provider Equipment. Host Customer shall not cause or voluntarily permit any modification or alteration to any part of Power Provider’s equipment located on the Property, including without limitation the System, valves, conduits, piping or other materials or tools, except in the event of an emergency. In an emergency, to the extent that Host Customer is aware of a threat of injury to persons or damage to property Host Customer shall take reasonable steps to prevent or minimize the harm and shall so inform Power Provider as soon as practicable (orally or in writing). In the event that Power Provider is capable of generating and delivering electricity to Host Customer, but as a result of Host Customer’s willful misconduct, errors or omissions, Host Customer does not accept delivery of such electricity or is unable to accept delivery of such electricity, Host Customer shall pay Power Provider the estimated amount of electricity that would have been delivered but for Host Customer’s actions.
  6. Host Customer Maintenance of its Property. Host Customer shall use care to ensure that its Property and all equipment thereon does not disrupt or interfere with the operation of the System. Host Customer shall maintain, repair and replace such parts of the Property in good condition and repair. Power Provider shall use care to ensure that the System and all related equipment does not disrupt or interfere with the operation of the Property. Power Provider shall maintain, repair and replace such parts of the System to comply with applicable law and shall secure and enforce all System warranties.

1. **TERM.**

7.1 The term of this PPA (“Term”) shall commence on the Effective Date set forth above and shall expire 25 years from the Service Commencement Date (as defined below) unless the PPA is terminated earlier as set forth herein. Power Provider shall provide no less than three (3) business days written notice prior to the Service Commencement Date to Host Customer that the System is ready for operation and has successfully completed all performance testing in accordance with Prudent Industry Practice (as defined below) and that service under this PPA will begin on the date certain indicated in the notice (the “Service Commencement Date”). The delivery of energy from the System as part of the commissioning and testing process shall not constitute the commencement of service. At any time prior to the end of the Term, the Parties may meet and negotiate the terms and conditions on which this PPA may be extended in their respective sole and absolute discretion. For purposes of this paragraph, “Prudent Industry Practice” shall mean the practices, methods and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

7.2 Upon the expiration of the Term or the termination of this Agreement by any Party, and, subject to Sections 10.4.2 and 10.4.3, Power Provider will promptly dismantle, pack and remove the System from the Property and repair any damage caused by such removal. If Power Provider fails to undertake such action within thirty (30) days written notice of termination from Host Customer, then Host Customer may arrange to have the System removed at Power Provider’s sole cost and expense.

7.3 Notwithstanding any other term in this PPA to the contrary, Power Provider shall have the right to terminate without liability this PPA at any time during the Term in the event Power Provider reasonably determines that (a) the cost to upgrade or improve any structural component of the improvements on the Property exceeds $50,000.00 or (b) the cost to comply with a governmental order relative to the ownership or operation of the System exceeds $100,000. Such termination will be deemed effective the date given in Power Provider’s termination notice to Host Customer; provided, however, that Power Provider’s specified date of termination shall be no later than sixty (60) days following the date Power Provider’s termination notice is actually received by Host Customer.

7.4 Notwithstanding anything in this PPA and/or the Site Lease to the contrary, at the end of any year of the Term following the fifth (5th) year of the Term, so long as Host Customer is not in default under this PPA, Host Customer may purchase the System from Power Provider for a purchase price equal to the amount yielded by the formula set forth on **Exhibit D** attached hereto (the “Purchase Option Price”), which Purchase Option Price is intended to constitute the present value of all economic benefits that Power Provider would have received pursuant to this PPA (including Environmental Financial Attributes and Renewable Energy Credits) for the balance of the Term but for such purchase and the corresponding termination of this PPA. Host Customer must provide a notification to Power Provider of its intent to purchase at least ninety (90) days prior to the end of such year of the Term, and the purchase shall be completed prior to the end of such year. Power Provider shall transfer good title to the System to Host Customer upon Power Provider’s receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied, concerning the System, “as is, where is, with all faults”; provided that Power Provider shall assign to Host Customer any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. From and after closing of such purchase of the System, Power Provider will have no further responsibility for the operation and maintenance of the System or liability for the performance of the System, and Power Provider shall have no further liabilities or obligations hereunder relating to and first arising or accruing during the period from and after such closing. The Parties shall act in good faith to extend or shorten these time requirements, and to complete such purchase efficiently and reasonably, and the parties shall enter into such agreements and documents as are reasonably necessary to complete such purchase.

1. **INSURANCE**
   1. General Liability Coverage. From the Effective Date until termination or expiration of the Term, Power Provider and its contractors and subcontractors and Host Customer each agree to maintain or cause to be maintained General Liability insurance against claims for bodily injury, loss of life or property damage occurring on the Property (including within the buildings thereon); and on the portion of the street and the sidewalks adjacent thereto with bodily injury, loss of life and property damage coverage in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence. Such insurance may be in the form of blanket liability coverage applicable to the Property and to other property owned or occupied by Host Customer or Power Provider, as applicable. The other Party shall be named under the applicable policy as Additional Insureds.
   2. Automobile Coverage. Power Provider and its contractors and subcontractors, as applicable, shall carry a business automobile policy with a combined single limit of not less than One Million Dollars ($1,000,000). Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto). The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the Host Customer.
   3. Workers Compensation Coverage. Power Provider, its contractors and subcontractors as applicable, shall carry Workers’ Compensation insurance during the full term or duration of the PPA, to insure statutory liability for injury to its employees in the State of California. The policy should have limits as follows: Bodily injury by accident, $1,000,000 each accident, and each employee a $1,000,000 policy limit.
   4. Property Damage. Power Provider will carry all-risk coverage for property damage in an amount equivalent to the full replacement value of the System. Host Customer will carry all-risk coverage for property damage in an amount equivalent to the full replacement value of any improvements located on the Site, excluding the System.
   5. All Policies. All insurance, including Workers Compensation coverage, shall include an insurer’s Waiver of Subrogation in favor of the other Party and will be in a form and with insurance companies acceptable to the other Party. All insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. The workers’ compensation and employer’s liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the other Party.
   6. Evidence Required. Insurance certificates for all coverages required by the PPA shall be provided by each Party to the other Party within twenty (20) business days after the Effective Date, prior to the construction of the System and during the term of this Agreement as requested in writing by the other Party. All insurance policies shall contain a provision that such policies shall not be canceled or terminated without thirty (30) days prior notice from the insurance company to the other Party.
2. **TAXES**
   1. Sale of Energy. In the event that any state or local taxes are assessed against the generation, sale, delivery or consumption of energy, Host Customer shall either pay or reimburse Power Provider for all such amounts due, including any taxes assessed thereon, as set forth in Section 2.4.2, except any federal or state income taxes imposed on Power Provider based on such sales.
   2. Real Estate or Property Taxes. Power Provider will pay and hold harmless Host Customer from ad valorem and related property tax, if any, assessed on (i) the System; (iii) Power Provider's ownership, installation or use of the System; or (iii) any other aspect of this PPA.
   3. Other Taxes. Power Provider will pay and hold harmless Host Customer from any federal, state or local taxes imposed upon Host Customer arising from this PPA, other than as set forth in Section 9.1 above, including but not limited to Power Provider's manufacture, installation and acquisition of the System.
   4. Revenue and Tax Code Notice. This PPA may result in the creation of a possessory interest. (Rev. & Tax. Code § 107.6) If such a possessory interest is vested in Power Provider, Power Provider may be subjected to the payment of personal property taxes levied on such interest. Power Provider shall be responsible for the payment of, and shall pay before becoming delinquent, all taxes, assessments, fees, or other charges assessed or levied upon Power Provider. Power Provider further agrees to prevent such taxes, assessments, fees, or other charges from giving rise to any lien against the Property or any improvement located on or within the Property. Nothing herein contained shall be deemed to prevent or prohibit Power Provider from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law. Power Provider shall be responsible for payment of any personal property taxes, possessory interest taxes, permit fees, business license fees and any and all fees and charges of any nature levied against the System and the operations of Power Provider at any time. If bills for taxes on the System thereon are received by the Host Customer, Host Customer shall immediately remit such bills to Power Provider. Any fee or charge resulting from any possessory interest created hereby and/or the use and operation of the System on the Property shall be the responsibility of the Power Provider. In the event of any sale of the Property, Power Provider shall not be responsible for any taxes levied as a result of such sale.
3. **DEFAULT**
   1. Events of Defaults. Any one or more of the following events shall constitute an event of default (“Event of Default”): (a) Host Customer fails to pay an invoice within sixty (60) days of the date of the invoice; (b) Host Customer materially interferes with or damages the System; (c) Either Party fails to observe or perform any other material term or condition in this PPA; (d) Either Party (i) voluntary or involuntarily files or has filed a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provisions of the bankruptcy laws that is not dismissed within sixty (60) days of the initial filing, (ii) makes an assignment for the benefit of creditors, (iii) has a receiver appointed with respect to the business property or assets of such Party on the Property, or (iv) otherwise is unable to pay its debts as they become due; (e) Either Party misrepresents a material fact contained in this PPA as of the Effective Date; and (f) Either Party violates or fails to enforce any applicable law, regulation or ordinance related to the use or occupancy of the Property.
   2. Right to Cure. Either Party shall, after notice, promptly and diligently commence curing a Default and shall have thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of the defaulting Party’s failure is such that more than thirty (30) days are reasonably required for its cure, then such Party shall not be in Default if the defaulting Party begins such cure within the thirty (30) day period described in the preceding sentence, provides notice to the non-defaulting Party of the extended time required for performance, within such thirty (30) day period, and, thereafter, diligently prosecutes such cure to completion.
   3. Notice of Default. A Party shall not be considered to be in default under this PPA unless (i) the non-defaulting Party has given written notice specifying the default; and (ii) the defaulting Party has failed to cure the default in accordance with provisions of Section 10.2.
   4. Remedies.
      1. If the defaulting Party has failed to cure as set forth herein, the non-defaulting Party shall have right to terminate this PPA by giving written notice to the defaulting Party on a date specified in such notice.
      2. If a termination occurs as a result of Host Customer’s default, then, as Power Provider's sole and exclusive remedy under this PPA (and/or at law or in equity) against Host Customer in connection with such default and termination (as more particularly set forth in Section 10.4.4 below), Host Customer shall pay Power Provider an “Early Termination Payment,” which shall be an amount equal to the applicable termination payment set forth on **Exhibit E** attached hereto. Upon Host Customer’s default, Power Provider is entitled, but shall not be obligated, to remove the System without further obligation to Host Customer, provided, however, that (i) if Power Provider elects to remove the System, Power Provider shall remain responsible for the cost of any repair to the Buildings resulting from such removal (which repair costs may be offset against any amounts due from Host Customer under this Section), and (ii) if Power Provider elects not to remove the System, Power Provider shall transfer good title to the System to Host Customer upon such election, and Power Provider shall have no further obligations to Host Customer by reason of this PPA.
      3. If Power Provider is the defaulting Party and Host Customer terminates this PPA, then, as Host Customer’s sole and exclusive remedy under this PPA (and/or at law or in equity) against Power Provider in connection with such default and termination (as more particularly set forth in Section 10.4.4 below), Power Provider shall pay Host Customer a "PP to HC Early Termination Payment", which shall be equal to the sum of (1) the net present value (using a discount rate equal to the then current prime rate of interest as published in The Wall Street Journal on the day preceding the date of termination of this PPA) of the excess, if any, of the reasonably expected cost of electric energy from the utility provider (which shall be based on the rates then in effect as of the date of termination from such utility and the average usage at the Property (including hours of usage, peak demand, etc.) for the previous 12 month period) over the Solar Energy Price for the reasonably expected production of the System for the remainder of the Term; (2) all costs reasonably incurred by Host Customer in re-converting its electric supply to service from the utility provider; and (3) any and all other amounts previously accrued under this PPA and then owed by Power Provider to Host Customer. The termination payment to Host Customer shall not be less than zero.
      4. Termination of the PPA pursuant to this Section, subject to the limitations set forth in this section, shall not be deemed to limit the non-defaulting Party’s right to pursue any other remedy given under this PPA or now or hereafter existing at law or in equity or otherwise, subject to Section 12.1 below; provided, that, the Parties agree that actual damages to each Party in the event of a termination of this PPA as the result of an Event of Default by the other Party beyond all applicable notice and cure periods hereunder would be difficult to ascertain, and the Early Termination Payment or PP to HC Early Termination Payment (as the case may be), if pursued and obtained, is a reasonable approximation of the damages suffered by the applicable Party as a result of early termination of this PPA as a result of such Event of Default by the other Party beyond all applicable notice and cure periods.
4. **FORCE MAJEURE.** Neither Power Provider nor Host Customer shall be considered to be in default in the performance of its obligations under this PPA (excluding Host Customer’s obligations to make payment for electricity generated and delivered to Host Customer), to the extent that performance of any such obligation, is prevented or delayed by a force majeure event, including, but not limited to by way of example, acts of God, adverse weather conditions and other acts of nature, subsurface conditions, supply shortages, and/or riot or civil unrest provided that written notice of such event is provided to the other Party. For avoidance of doubt, Host Customer shall not be considered to be in default if Host Customer is unable to accept electricity due to a Force Majeure event and such electricity cannot be delivered to the local utility as described in Section 6.4. In the event of a Force Majeure event that only affects Host Customer’s payment processing and Power Provider performs in accordance with the PPA, Host Customer may delay payment for the duration of the Force Majeure event but Host Customer shall not be excused from its payment obligations for electricity delivered by Power Provider and accepted by Host Customer in accordance with this PPA.
5. **LIABILITY; INDEMNIFICATION**
   1. Mutual Limitation of Liability. Unless explicitly provided in this PPA, neither Party hereto nor any of their respective partners, officers, directors, agents, subcontractors, vendors or employees shall be liable to the other Party hereunder for any consequential or indirect loss or damage arising out of this PPA, whether such loss or damage arise in contract, tort (including negligence), strict liability, warranty, statute or otherwise, including loss of revenues, loss of profit, cost of capital, loss of goodwill, or any other special or incidental damages. Notwithstanding the foregoing, this Section 12.1 shall not limit the damages available to a Party to the extent that it is covered by any insurance coverage with respect to claims of personal injury, wrongful death or property damage.
   2. Mutual Indemnification. To the fullest extent permitted by law, and subject to section 10.4, each Party (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and its officers, employees, contractors and agents (“Indemnitees”) from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages, fines, penalties, court costs and reasonable attorneys’ fees (collectively, “Claims”) that arise or result from, or are occasioned by or in connection with: (a) the Indemnifying Party’s breach of this PPA and/or the Site Lease; (b) any negligent, reckless or intentionally wrongful act or omission to act by the Indemnifying Party; and (c) violations of laws by the Indemnifying Party. Notwithstanding the foregoing, it is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party’s negligence. This indemnification, defense and hold harmless obligation shall not be limited by insurance coverages and shall survive the termination or expiration of this PPA and the Site Lease.

12.3 Individual Indemnification. Power Provider shall further be the Indemnifying Party and Host Customer shall be the Indemnitee with respect to any Claims by third parties that arise as a result of the operation of the System by Power Provider, its employees, contractors and agents. Host Customer shall further be the Indemnifying Party and Power Provider shall be the Indemnitee with respect to any Claims by third parties that arise as a result of the operation of the Site and the Property (excluding the System) by Host Customer, its employees, contractors and agents.

1. **ASSIGNMENT**
   1. Assignment; Binding Effect. The Parties shall not, without the prior written consent of the other, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this PPA, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void. Notwithstanding the foregoing, Host Customer shall have the right to transfer this PPA in connection with the sale of the Property, provided that Power Provider is provided ten (10) days written notice of such transfer and upon the assumption of any and all rights and obligations in this PPA and the Site Lease by the purchaser of the Property. Host Customer shall be released from its obligations hereunder upon such transfer. For the purposes of this Section 13.1, (a) changes in control of Power Provider shall not be deemed an assignment of this PPA; and (b) Power Provider shall be entitled to assign its rights and interests in this PPA for collateral purposes in connection with any equity or debt financing of Power Provider or Power Provider’s Affiliates, provided, however, that notwithstanding any such assignment, Power Provider will remain responsible for the performance of all obligations under this Agreement. Each Party agrees to execute such reasonable consents to assignment and other documents, and to provide such information, as is requested by the other Party and reasonably required in connection with any permitted assignment pursuant to this Section.
   2. Cooperation with Financing. Host Customer acknowledges that Power Provider will be financing the acquisition of the System and Host Customer agrees that it shall cooperate with Power Provider and its financing parties in connection with such financing of the System. Such cooperation shall include (a) the furnishing of such Host Customer information reasonably requested by Power Provider’s lender, (b) the giving of such usual and customary estoppel certificates, (c) instruments in commercially reasonable form that provide Power Provider’s lender the right to secure and gain access to the System, (d) accommodating reasonable requests by the financing party for clarifications regarding the rights and duties of the Parties under this PPA; provided, however, in no event will Host Customer be obligated to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Host Customer under this PPA (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Power Provider as a financing party may reasonably request).
   3. Transfer and Assignment Notice. In the event Power Provider desires to assign or transfer all or any portion of the PPA, Power Provider shall deliver to the Host Customer thirty (30) days advance written notice of its intention ("Transfer Notice"), which written notice shall set forth:
      1. Power Provider's bona fide intention to transfer the PPA, or portion thereof; and
      2. The name and address of the proposed purchaser or transferee ("Proposed Transferee") and its qualifications and experience operating similar projects to the System; and
      3. Reasonably detailed information about the financial and business status and controlling persons of Transferee.

Such transfer shall be subject to written consent and approval of Host Customer in accordance with Section 13.1.

13.4 Assignment to Project Company. Notwithstanding any other provision in this PPA to the contrary, Power Provider shall have the right to assign this PPA to an affiliated limited liability company so long as: (a) Power Provider is a manager of such company, (b) such assignment occurs prior to the Service Commencement Date, and (c) such company is active and in good standing with the California Secretary of State.

1. **MISCELLANEOUS.**
   1. Dispute Resolution and Arbitration.
      1. Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this PPA, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the twenty (20) business day periods following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) business day periods, request the utilization of the services of a professional mediator, and the other Party or parties to this dispute shall cooperate with such request and equally share the reasonable costs of such mediator. Any such controversy, claim or dispute not resolved within sixty (60) days after such mediator has been engaged shall be subject to resolution in accordance with Section 14.1.2 below.
      2. Arbitration. Any dispute arising under this PPA, including, without limitation, all disputes relating in any manner to the performance or enforcement of this PPA shall be resolved by binding arbitration in the County of Sacramento, California, pursuant to the rules of Judicial Arbitration and Mediation Services (“JAMS”), as amended or as augmented in this Agreement (the “Rules”). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the Parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney’s fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the Parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the Parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The Parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The document demand and response shall conform to Code of Civil Procedure section 1282.6. The deposition notice shall conform to Code of Civil Procedure section 1283. The Parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in Code of Civil Procedure. Notwithstanding the election by the Parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.
   2. Confidentiality.
      1. Host Customer agrees that certain documents related to the performance of the Parties, including the costs of operations and services incurred in that performance may be proprietary and confidential to Power Provider. Host Customer agrees to provide reasonable notice to Power Provider upon receipt of Public Records Act requests seeking such documents that may be trade secrets and proprietary, as defined in Cal. Civil Code Section 3426.1(d), or otherwise exempt by law from disclosure and which are prominently marked as “Trade Secret”, “Confidential” or “Proprietary” so that Power Provider may have a reasonable opportunity to object to the disclosure of documents that it contends are confidential or proprietary.
      2. Power Provider agrees to keep confidential all documents, utility bills, architectural and mechanical plans, and any other information provided by Host Customer during the Term of this PPA and thereafter.
      3. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction. Furthermore, Host Customer may disclose this PPA to the extent required by law or court order or as legal counsel for Host Customer may deem advisable in connection with protecting its status as a government agency, including any matters related to the duty of the officers and directors of Host Customer.
   3. Notices and Changes of Address. All notices to be given by either Party to the other shall be in writing and must be either delivered in person or sent via express overnight delivery service addressed as follows:

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| If to Power Provider:  Nobell Energy Solutions, LLC  2045 East Tahquitz Canyon Way  Palm Springs, CA 92262  Attn: Manager  (760) 837-7400  [fritz@nobellenergy.com](mailto:fritz@nobellenergy.com) (E-mail) | If to Host Customer: |

or such other addresses as either Party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered. Either Party may provide a copy of a notice by electronic mail, but such delivery shall not be deemed effective unless the original copy is delivered in person or sent via express mail delivery service.

* 1. Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of California. Jurisdiction and venue shall be Sacramento County, California.
  2. Attorneys’ Fees. If any action shall be instituted between Host Customer and Power Provider in connection with this PPA, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys’ fees.
  3. No Amendment. This Agreement may not be amended, modified or terminated except by a writing signed by the Parties hereto.
  4. Energy Audit. Any energy audit that may be authored by Power Provider and/or its consultant(s), including any summaries, excerpts, and abstracts thereof (collectively, the “Energy Audit”), are used to show operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by Power Provider; in the event of any conflict or contradiction between the Energy Audit and the provisions of this PPA, the provisions of this PPA shall govern.
  5. Further Documents. The Parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this PPA.
  6. Severability. If any part of this PPA is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced only to the extent required to remove the invalidity or unenforceability.
  7. Counterparts. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement.
  8. Neutral Interpretation. The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this PPA shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this PPA are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this PPA or any provision hereof.
  9. No Waiver. The failure of a Party to enforce any term of this PPA or a Party’s waiver of the nonperformance of a term by the other Party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can be amended only by written agreement of the Parties.
  10. Survival. Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this PPA shall survive the termination of this PPA, including without limitation Section 22.1.
  11. Marketing. Each Party has the right to promote the installation and usage of the installed System through any means, including through press releases, case studies, published material, Internet websites and sales literature, so long as the other Party is provided with the opportunity to review and approve the proposed promotion in writing, which may not unreasonably be withheld, conditioned or delayed.
  12. Forward Contract.  Without limiting the applicability of any other provision of the U.S.  Bankruptcy Code as amended (the “Bankruptcy Code”), the Parties acknowledge and agree that (i) this PPA constitutes a “forward contract” as defined in Section 101 (25) of the Bankruptcy Code, (ii) the Parties are forward contract merchants, (iii) that the rights of the Parties under the termination provisions of this PPA will constitute contractual rights to liquidate transactions hereunder, (iv) that any payment related thereto will constitute a “settlement payment” as defined in Section 101 (51A) of the Bankruptcy Code, and (v) that the Parties are entitled to the rights under, and protections afforded by, Sections 362, 546, 556, and 560 of the Bankruptcy Code.
  13. Service Contract.  The Parties acknowledge and agree that, for accounting or tax purposes, this PPA is not and shall not be construed as a lease and, pursuant to Section 7701(e)(3) of the Code, this PPA is and shall be deemed to be a service contract with respect to the sale to the Power Provider of electric energy produced at an alternative energy facility.
  14. Complete Agreement. This PPA, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, whether oral or written. There are no agreements, understandings, or covenants between the Parties of any kind, expressed or implied, oral or otherwise pertaining to the rights and obligations set forth herein that have not been set forth in this PPA.
  15. Conflicts. In the event of any conflict between this PPA and the Site Lease, the terms of this PPA will prevail.

[Signatures follow on the next page]

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties have each executed this PPA as of the Effective Date.

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| --- | --- |
| Power Provider:  NOBELL Energy Solutions, LLC,  a California limited liability company  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Frederick W. Noble, Jr., Manager | Host Customer:  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

SITE LEASE AGREEMENT

This Site Lease Agreement (“Agreement”) made and entered into as of \_\_\_\_\_\_\_\_\_\_\_ \_\_, (the “Effective Date”), between Nobell Energy Solutions, LLC, a California limited liability company (“Tenant”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Landlord”).

**WHEREAS**, Concurrently herewith, Landlord and Tenant have entered into that certain Solar Power Purchase Agreement (“PPA”) dated , wherein Tenant has agreed to develop, finance, install, own, operate, maintain and repair a solar energy facility, as more particularly described in Exhibit “B” of the PPA (the “System”), on the Site (as defined in Section 1 below) and Landlord has agreed to lease the Site, and to provide certain access rights, to Tenant for such purpose. Landlord has also agreed to purchase from Tenant energy generated by the System in accordance with the term of the PPA.

**WHEREAS**, Landlord currently owns the real property more particularly described on Exhibit “A” attached hereto (“Property”) and all structures (“Buildings”) and other improvements (“Improvements”) located thereon other than the System.

**WHEREAS**, in order to carry out the terms of the PPA, and to enable Landlord to enjoy its rights and perform its obligations under the PPA, Landlord agrees to lease the Site (as defined below) to Tenant on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Landlord hereby agree as follows:

**1. LEASE**

Landlord does hereby grant, demise and sublease to Tenant, and Tenant hereby subleases from Landlord for a period coterminous with this Agreement, in accordance with the terms and conditions set forth herein, a portion of the Property consisting of approximately \_\_\_\_\_\_\_\_\_\_ square feet of *[roof top space on the Buildings or parking lot space]* as shown on the site plan attached hereto as Exhibit “B” (the “Site”) for the benefit of where the System will be installed. At the completion of the installation of the System and supporting infrastructure, Tenant shall promptly provide Landlord with “as built” plans for the System. Landlord hereby also grants to Tenant for a period coterminous with this Agreement a non-exclusive easement and right of way across or through the Property to the Site as may be reasonably required for (i) the delivery, installation, operation, maintenance and repair of the System; (ii) utility lines, pipes and conduit for the transmission of electricity or otherwise serving the System; and (iii) as may be otherwise reasonably required by Tenant in connection with this Agreement and the System. All plans for any modifications to the Site will be subject to the prior review and approval of Landlord, its architect or other professional advisors, in their sole discretion, which approval will not be unreasonably withheld, conditioned or delayed. Landlord reserves all rights to use the Site and easement right of way, except to the extent Landlord’s use interferes with Tenant’s use of the Site or easement right of way in accordance with this Agreement or the PPA.

**2. RENT**

Tenant, and any assignee or successor interest of the Tenant, hereby covenants to pay Landlord, on or before the Service Commencement Date (as defined in the PPA), as and for rent of the Site for the Term (as defined in paragraph 8(a) below), the sum of One Dollar ($1.00) per year, the receipt of which is hereby acknowledged by Landlord. (“Rent”)

**3. SYSTEM CONSTRUCTION**

(a) Installation. Subject to the approval rights set forth below, Landlord hereby consents to Tenant’s construction and installation of the System, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections in accordance with the PPA. Tenant will be solely responsible for obtaining all necessary permits and approvals for such installation and for compliance with all requirements of federal, state or local law. All plans for any modifications to the Site will be subject to the prior review and approval of Landlord, its architect or other professional advisors, in their sole discretion, which approval will not be unreasonably withheld. Tenant shall notify Landlord in writing not less than fifteen (15) days in advance of the time that Tenant intends to commence construction and installation of the System. Within thirty (30) days after the Service Commencement Date (as defined in the PPA), Tenant shall deliver to Landlord the following in writing: (i) Tenant’s statement stating that the System installed by Tenant has been completed substantially in compliance with the terms and conditions of this Lease and the PPA; and (ii) an affidavit of Tenant stating that all contractors, subcontractors, laborers, and material workers who have performed work on or furnished materials to the Site have been paid in full and that all liens therefore that have or might be filed have been discharged of record or waived or that a bond has been posted for such purpose.

(b) System Support. Landlord has provided all plans and other information required by Tenant to determine the rooftops Buildings on which the System will be installed have sufficient structural strength and integrity to support the System in accordance with all applicable building codes without any further modification or improvements to the Site by Landlord (unless otherwise provided for in Exhibit “B”). In the event that any modifications or improvements are required in connection with the installation of the System, it will be at the sole cost and expense of Tenant.

**4. SYSTEM INSTALLATION, OPERATION AND OWNERSHIP**

(a) Tenant Rights. Tenant shall have the right from time to time during the term of this Agreement:

(i) to construct, install and operate the System on the Site;

(ii) to maintain, clean, repair, replace and dispose of part or all of the System and to maintain the Site as may be required for the proper functioning and operation of the System;

(iii) to add or remove equipment as needed provided that there is no material change in the character or appearance of the Site;

(iv) to access the Site at times as are reasonably acceptable to Landlord without material disruption of Landlord’s operations;

(v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Tenant and to carry out the activities set forth in this Section 4 and in the PPA; and

(vi) to install higher efficiency equipment or additional equipment as permitted by the PPA.

(b) Transfer of Property. Landlord acknowledges and agrees that Tenant or Tenant’s affiliate is the exclusive owner and operator of the System, and that the System 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 Property. Landlord shall not Transfer the Property unless Landlord shall have given Tenant at least ten (10) days’ prior written notice thereof, which notice shall identify the Transferee, the Property to be so Transferred and the proposed date of Transfer. Landlord agrees that this Agreement and the rights granted in Section 1 of this Agreement shall run with the Property and survive any Transfer of any of the Property. Landlord shall cause any Transferee to acknowledge and consent to be obligated under the terms herein, and acknowledge Tenant’s rights in the Site as set forth herein including, without limitation, an acknowledgement by such Transferee that it has no interest in the System and shall not gain any interest in the System by virtue of the Landlord’s Transfer.

**5. ACCESS TO SITE**

Tenant will give Landlord reasonable written or telephonic notice, but no later than 24 hours, before any entry onto the Site by Tenant’s employees, agents or contractors. Landlord will provide Tenant access to the System and the Site for the purposes set forth in Section 4 hereof. Notwithstanding anything to the contrary in this Agreement, Tenant shall be permitted to access the Site twenty-four (24) hours a day, seven (7) days a week for *emergency purposes*, as reasonably determined by Tenant. Within twenty-four (24) hours of such emergency access, Tenant shall provide Landlord with a written explanation of the nature of the emergency. Non-emergency access shall be limited to normal business hours (i.e., Monday through Friday, excluding holidays, between the hours of 7:00 am. and 7:00 p.m.).

Landlord reserves the right during the period coterminous with this Agreement for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof so long as such repairs, improvements, or changes to the Site do not materially affect the System or its ability to deliver electrical power to the Connection Point (as defined in the PPA).

**6. REPRESENTATIONS AND WARRANTIES, COVENANTS OF LANDLORD**

(a) Authorization and Validity. The execution and delivery by Landlord of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Landlord or any valid order of any court, or regulatory agency or other body having authority to which Landlord is subject. This Agreement constitutes a legal and valid obligation of Landlord, enforceable against Landlord in accordance with its terms.

(b) Landlord’s Interest in Property. Landlord represents, warrants and covenants that Landlord has lawful authorization to use and occupy the Property and Buildings and Improvements thereon; and that Tenant shall have quiet and peaceful possession of the Site, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Tenant’s quiet enjoyment thereof, throughout the term of this Agreement.

(c) No Interference with and Protection of System. Landlord represents and warrants to Tenant that there are no circumstances known to Landlord and commitments to third parties that may damage, impair or otherwise adversely affect the System or its construction, installation or function (including activities that may adversely affect the System’s exposure to sunlight). Landlord will not initiate, conduct or permit activities on that it knows or reasonably should know, in or about the Site or the Property that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System (including activities such as, but not limited to, the growth of trees or other vegetation, that may adversely affect the System’s exposure to sunlight). Landlord shall take all reasonable steps to limit access to the Site to Tenant and Tenant’s employees, invitees, agents and representatives. Landlord shall have no obligation to provide security for the System.

(d) Mortgage Subordination. Landlord covenants that it will obtain a subordination, non-disturbance and attornment agreement (“SNDA”) from any third party who now has or may in the future obtain an interest in the Property, including, without limitation, any lenders to Landlord or any lenders to the fee title owner, as applicable. Such SNDA shall (i) acknowledge and consent to the Tenant’s rights in the Site and the Property, (ii) acknowledge that such third party has no interest in the System and shall not gain any interest in the System by virtue of the parties’ performance or breach of this Agreement, (iii) subordinates any lien such third party may have in and to the Property to this Agreement, and (iv) acknowledge that any such third party shall not disturb Tenant’s use and enjoyment of the Site in accordance with the terms of this Agreement should such third party (or such third party’s successors-in-interest) acquire title to the Property through foreclosure, a deed in lieu, or otherwise.

(e) Utilities. Landlord shall provide Tenant with Station Power during the term of this Agreement provided the cost to Landlord for the same does not exceed ten dollars ($10.00) in any calendar month. For purposes of this Agreement, “Station Power” shall mean electric energy consumed in the start-up and operation of the System, which is distinct from the alternating current output of the System.

(f) Insolation. Landlord acknowledges and agrees that access to sunlight (“insolation”) is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Agreement. Accordingly, Landlord shall not permit any interference with insolation on and at the Site. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Property that could adversely affect insolation levels, or permit the growth of foliage on the Property that could adversely affect insolation levels. If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Site, Landlord shall advise Tenant of such information and reasonably cooperate with Tenant at no cost to Landlord in measures to preserve existing levels of insolation at the Site. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this Section 6(f), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(f).

(g) Hazardous Materials. Landlord represents and warrants that to the best of Landlord’s knowledge with no obligation to investigate the same, there are no Hazardous Materials (as defined herein) on the Property that would adversely affect the construction, installation or operation of the System. If Landlord becomes aware of the presence of any Hazardous Materials that would adversely affect the construction, installation or operation of the System, Landlord shall notify Tenant of the type and location of such Hazardous Materials in writing. Landlord agrees to assume full responsibility for (and protect, indemnify and defend Tenant against) any liability or clean-up obligations for any contamination or pollution or breach of Environmental Laws related to the Property, unless, but only to the extent, attributable to the actions of Tenant. For purposes of this Agreement, “Hazardous Materials” means and includes each substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance or as designated with words of similar meaning and regulatory effect under any Environmental Law, petroleum and petroleum products or derivatives, and any other substance for which liability or standards of conduct may be imposed under Environmental Law. For purposes of this Agreement, “Environmental Law” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; and all laws of any governmental authority having jurisdiction over the Property or the Site addressing pollution or protection of the environment and all amendments to such laws and all regulations implementing any of the foregoing.

(h) Liens. To Landlord’s knowledge, Landlord represents and warrants to Tenant that there are no liens, security interests or other encumbrances on the Property that to its actual knowledge would affect the System. Landlord covenants to Tenant that it will not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to all or a part of the System or any of Tenant’s interest therein. If Landlord breaches its obligations under this Section 6(h), it shall notify Tenant in writing within three (3) days, shall cause such Lien to be discharged and released of record without cost to Tenant, and shall defend and indemnify Tenant against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. If Landlord shall fail to remove and discharge any Lien as required under this Section 6(h) within ten (10) days following written notice by Tenant, then, in addition to any other right or remedy of Tenant, Tenant may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Landlord shall, within 10 days after demand therefor by Tenant, pay to Tenant an amount equal to all reasonable costs and expenses incurred by Tenant in connection with the exercise by Tenant of the foregoing right to discharge any Lien, together with interest thereon from the date of each such expenditure at the maximum rate permitted by law.

1. Reports, Plans and Studies. With respect to the reports, plans and studies Landlord has provided Tenant relating to the Property, or the Buildings or Improvements thereon, Landlord represents and warrants to Tenant that it is unaware, without duty of inquiry, of (a) any material incorrect or omitted fact or (b) a false or misleading opinion or conclusion contained therein.

(j) Consent and Non-Disturbance Letter. Landlord covenants that it will deliver to Tenant’s lender the landlord’s agreement substantially in the form set forth on Exhibit “C”.

**7. REPRESENTATIONS AND WARRANTIES, COVENANTS OF TENANT**

(a) Authorization and Validity. The execution and delivery by Tenant of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Agreement constitutes a legal and valid obligation of Tenant, enforceable against Tenant in accordance with its terms.

(b) Due Diligence; AS-IS. Tenant acknowledges that it has conducted its own investigation of the suitability of the Site for the System and is not relying on any representation or warranty of Landlord except as specifically set forth in this Agreement in making its decision to enter into this Agreement.

(c) Hazardous Materials. Tenant will not use or bring any Hazardous Materials to the Property or the Site in connection with its installation, operation or maintenance of the System unless such Hazardous Materials are routinely and customarily used in the construction, operation, maintenance or repairs of photovoltaic solar power generation systems. Tenant agrees to assume full responsibility for (and protect, indemnify and defend Landlord against) any liability or clean-up obligations for any contamination or pollution or breach of Environmental Laws directly caused by Hazardous Materials brought onto the Property by Tenant or its employees, contractors, or representatives.

(d) Compliance with Law. Tenant will install, operate and maintain the System and undertake all of its obligation under this Agreement in compliance with the requirements of all applicable federal, state and local laws, rules, regulations or ordinances.

(e) Liens. Tenant will not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to all or a part of the Property or Site or any of Landlord’s interest therein. If Tenant breaches its obligations under this Section 7(e), it shall immediately notify Landlord in writing, shall promptly cause such Lien to be discharged and released of record without cost to Landlord, and shall defend and indemnify Landlord against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. If Tenant shall fail to remove and discharge any Lien as required under this Section 7(e) within ten (10) days following written notice by Landlord, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Tenant shall, within 10 days after demand therefor by Landlord, pay to Landlord an amount equal to all reasonable costs and expenses incurred by Landlord in connection with the exercise by Landlord of the foregoing right to discharge any Lien, together with interest thereon from the date of each such expenditure at the maximum rate permitted by law.

**8. TERM; EVENT OF DEFAULT**

(a) Term. The term of this Agreement (“Term”) shall commence on the Effective Date, and unless earlier terminated pursuant to Section 8(c) herein, terminate on the date that is ninety (90) days after the termination of the PPA to allow for the orderly removal of the System.

(b) Removal. Upon the expiration of the Term or the termination of this Agreement for any reason, Tenant will promptly dismantle, pack and remove the System from the Site within the period specified above and repair any damage caused by such removal. If Tenant fails to undertake such action within thirty (30) days written notice from Landlord, then Landlord may arrange to have the System removed at Tenant’s sole cost and expense.

(c) Event of Default. If either party hereto fails to cure a material breach of this Agreement within thirty (30) days after written notice from the non-defaulting Party, such uncured breach shall be an event of default (“Event of Default”) under this Agreement; provided, however, that the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely by Force Majeure if the defaulting Party had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action. Upon the occurrence of an Event of Default, in addition to any other rights and remedies available to the non-defaulting Party at law or in equity, such non-defaulting Party shall have the option to terminate this Agreement upon written notice to the defaulting Party.

**9. DISPUTE RESOLUTION AND ARBITRATION**

In the event that there is any controversy, claim or dispute between the parties hereto arising out of or related to this Agreement, then either Tenant or Landlord may invoke the dispute resolution procedure set forth in Section 14.1 of the PPA.

**10. INSURANCE**

Each of Landlord and Tenant shall obtain and maintain the insurance coverages required under the PPA.

**11. TAXES**

Landlord shall pay all (a) real and personal property taxes relating to the Property on which the Site is situated, (b) taxes computed upon the basis of the net income or payments derived from the Property by Landlord or the owner of any interest therein, and (c) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the Effective Date. The Tenant agrees to pay all ad valorem taxes, personal and related property taxes, possessory interest taxes, business or license taxes or fees, excises, assessments, bonds, levies, fees or charges if any, of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Tenant’s use and operation relating to the System as provided in the PPA.

**12. LIABILITY AND INDEMNITY.**

The Liability and indemnity provisions of Section 12 of the PPA shall apply to this Agreement.

**13. ASSIGNMENT.**

This Site Lease may only be assigned in connection with a permitted transfer or assignment of the PPA.

**14. MISCELLANEOUS**

(a) Amendment. This Agreement may be amended only in writing signed by Tenant and Landlord or their respective successors in interest.

(b) Notices. All notices will be given in the manner specified in the PPA.

(c) Waiver. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the party making such waiver.

(d) Remedies Cumulative. No remedy herein conferred upon or reserved to Tenant or Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(e) Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

(f) Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). Venue shall be Riverside County.

(g) Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

(h) Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the parties.

(i) Entire Agreement. This Agreement (including the exhibits, any written schedules, supplements or amendments) along with the PPA represents the full and complete agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said parties with respect to said subject matter.

(j) Further Assurances. Upon the receipt of a written request from the other party, each party shall execute such additional documents (e.g., utility interconnection agreement), instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

(k) Estoppel Certificate. From time to time, upon written request by Tenant or Landlord (or their respective lenders), the other party shall provide within ten (10) days thereafter an estoppel certificate attesting, to the knowledge of Landlord or Tenant of the other party’s compliance with the terms of this Agreement or detailing any known issues of noncompliance.

(l) Attorneys’ Fees. If any action shall be instituted between Tenant and Landlord in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys’ fees.

[*Signatures on following page*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| Tenant:  Nobell Energy Solutions, LLC,  a California limited liability company  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Landlord:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT B**

**SYSTEM DESCRIPTION**

**(**As-built design to be provided at Service Commencement Date)













**EXHIBIT C**

**SOLAR ENERGY PRICE AND MONTHLY PAYMENT**

Solar Energy Price shall mean $0.2855 / kWh for the period commencing on the Service Commencement Date and expiring twelve (12) months thereafter. Commencing on the first anniversary of the Service Commencement Date, the Solar Energy Price shall increase three percent (3%) annually over the prior year’s Solar Energy Price. The Monthly Payment will be determined by multiplying the amount of electricity delivered by Power Provider from the System in kWh for a given calendar month by then applicable Solar Energy Price.

During any “Operating Year” (i.e., the period of time commencing on the Service Commencement Date or any anniversary thereof and continuing for twelve (12) consecutive months thereafter), Power Provider may, at its election, invoice Host Customer under a “level pay” plan for the System Output Component of the Monthly Payment (“Level Pay Plan”). Under such a plan, Power Provider will make a good faith estimate of the System Output for any given Operating Year (“Power Provider’s Estimated System Output”), multiply such System Output estimate by the Solar Energy Price in effect during such Operating Year and divide that result by twelve. The resulting amount shall be deemed the levelized amount for each monthly invoice delivered during the applicable Operating Year. At the conclusion of an Operating Year in which a Level Pay Plan was created, Power Provider will provide a settlement statement that provides the actual System Output for the applicable Operating Year, Power Provider’s Estimated System Output, the amounts invoiced and paid during the Operating Year, and the credit or additional charge to be applied to the next monthly statement for the System Output Component of the Monthly Payment.

EXHIBIT D

PURCHASE OPTION PRICE

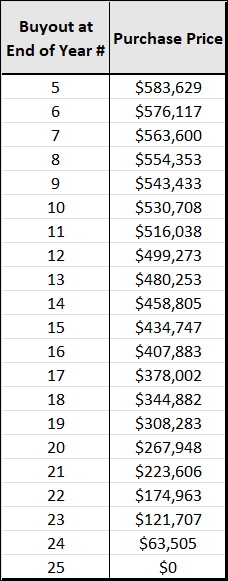


EXHIBIT E

EARLY TERMINATION PAYMENT

|  |  |
| --- | --- |
| **Termination During Year #** | **Purchase Price** |
| 1 | $1,040,011 |
| 2 | $940,442 |
| 3 | $824,962 |
| 4 | $699,337 |
| 5 | $593,629 |
| 6 | $586,117 |
| 7 | $573,600 |
| 8 | $564,353 |
| 9 | $553,433 |
| 10 | $540,708 |
| 11 | $526,038 |
| 12 | $509,273 |
| 13 | $490,253 |
| 14 | $468,805 |
| 15 | $444,747 |
| 16 | $417,883 |
| 17 | $388,002 |
| 18 | $354,882 |
| 19 | $318,283 |
| 20 | $277,948 |
| 21 | $233,606 |
| 22 | $184,963 |
| 23 | $131,707 |
| 24 | $73,505 |
| 25 | $10,000 |