

Staff Report

TO: Board of Directors

FROM: Tonia M. Tabucchi Herrera, P.E., Senior Engineer
Doug Roderick, P.E., Engineering Manager

DATE: April 13, 2022

SUBJECT: Self-Generation Incentive Program (SGIP) Battery Project
(Project #2520) - Energy Services Agreement (ESA)

ENGINEERING

RECOMMENDATION:

Authorize General Manager to execute the fourth Energy Services Agreement (ESA) with GSR-BTM for a battery storage project for the Business Center at 1036 W. Main Street; authorize General Manager to execute amended and restated ESAs for the three ESAs previously executed (E. George Water Treatment Plant, Loma Rica Water Treatment Plant, Norlene Pump Station) to update and conform terms across all four agreements; authorize General Manager to execute a Consent to Collateral Assignment, and to continue to provide Staff support to GSR-BTM for the implementation of the Self-Generation Incentive Program (SGIP) Battery Project (Project).

BACKGROUND:

In April 2021, the Board authorized Staff to execute ESAs with GSR-BTM for the E. George Water Treatment Plant, Loma Rica Water Treatment Plant, and Norlene Pump Station. At that meeting, Staff noted that a fourth ESA for the Business Center would be brought to the Board for consideration at a future date.

The executed documents were sent to the SGIP Administrator, at which point they required additional clarifying language in the ESAs. An amendment to conform the ESAs to these requirements was issued and executed.

Since the execution of the ESAs, Swell Energy has acquired GSR-BTM Battery Energy Storage System (BESS) portfolio in California. Golden State Renewables (GSR), which developed the portfolio of projects, will continue to work with NID to develop, build and commission the Projects; however, Swell Energy will be the long-term owner.

Swell Energy proposed a revision in the ESAs that eliminates their share of the utility bill cost savings in exchange for reducing the term of the agreement from 15 to 10 years. If NID and Swell agree, the Parties can extend the agreement term for an additional five (5) years (to 15 years total), which would require the Parties to maintain the operation and maintenance warranty with Tesla. These updates are reflected in the attached ESAs for all sites.

Swell Energy proposed the revisions to the ESAs to reduce the administrative cost for both NID and Swell Energy. Prior conditions would require Swell Energy to calculate actualized savings and present them to NID for review and acceptance. NID, in turn, would pay Swell Energy a percentage of the savings as stated in the original ESA. By eliminating the sharing of utility bill cost savings with GSR-BMT, NID will retain more of the economic benefits of the battery systems.

Additionally, Swell Energy proposed the revisions to conform to the terms they have in their broader BESS portfolio.

Upon conclusion of the program under the revised terms, at the end of year 10, NID will have the option to have GSR remove the batteries and return the site to near the previous condition or extend the ESA through year 15.

The Consent to Collateral Assignment is an additional document requested by Swell Energy's financial institution. The Consent to Collateral Assignment allows the lender to take over the rights and obligations of the Seller in the Energy Services Agreement should Seller be unable to fulfill its obligations. The consent is required as security for the financing provided to the borrower by the lender. Please note, the signatory is "C&I ER1, LLC" because Swell Energy will be assigning all of their battery storage projects currently held by GSR-BTM, LLC to a new LLC called C&I ER1, LLC, which is the borrower under the construction-to-term loan and is a wholly-owned subsidiary of Swell Energy. The signed agreement will be held in escrow until the loan closing. Upon closing, the dates and remaining information will be filled in the consent, and C&I ER1, LLC and the Collateral Agent (the bank) will sign and return a fully executed agreement to NID.

The ESAs and the Consent to Collateral Assignment have been reviewed/revised by District counsel.

BUDGETARY IMPACT:

Staff time is required to provide support for the design and installation of the equipment. Staff support may be required from time to time for access. Retaining 100% of the expected cost savings should further reduce the District's ongoing electricity bills at these four sites to help offset other costs.

TMTH

Attachments: (5)

- Business Center 1036 W. Main Street ESA
- Amended and reinstated E. George Water Treatment Plant ESA

- Amended and reinstated Loma Rica Water Treatment Plant ESA
- Amended and reinstated Norlene Pump Station ESA
- Consent to Collateral Assignment

Energy Services Agreement

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

Host Customer:		Seller:	
Name and Address	Nevada Irrigation District Business Center 1036 W Main Street Grass Valley, CA 95945 Attention: Doug Roderick Site Address: Same	Name and Address	GSR-BTM LLC 1515 7 th Street #049 Santa Monica, CA 90401 Attention: Phillip Suna
Phone	530-273-6185	Phone	(888) 465-1784
Fax	None	Fax	None
E-mail		E-mail	phillip@swellenergy.com
Premises Ownership	Host Customer [X] owns [] leases the Premises. List Premises Owner, if different from: Host Customer: _____ n/a _____	Additional Seller Information	
Tax Status	Tax-exempt		
Project Name	1036 W Main Street		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point, and Premises
- Exhibit 3** Host Customer Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Definition of Services

Host Customer: NEVADA IRRIGATION DISTRICT Seller: GSR-BTM LLC

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT 1

Pricing

1. **Initial Operating Term:** Ten (10) years, beginning on the Commercial Operation Date (the “**Initial Operating Term**”).
2. **Additional Operating Term:** Up to one (1) additional term of five (5) years at a price to be agreed by the Parties beginning on the expiration of the Initial Operating Term (the “**Additional Operating Term**”).
3. **Contract Price:** Self Generation Incentive Program (SGIP) Payments are assigned by Host Customer to Seller and paid by SGIP Program Administrator directly to Seller in accordance with the General Terms and Conditions of this Agreement. The table below delineates anticipated SGIP Payments to be paid directly to Seller by SGIP Program Administrator and payments paid by Host Customer to Seller. Host Customer shall have no obligation whatsoever to pay Seller amounts under the column titled “From SGIP Program Administrator to Seller.” Payments from Host Customer to Seller for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4**

Operating Term Contract Year	\$/year (from SGIP Program Administrator to Seller)	\$/year (from Host Customer)
1	\$314,000.00	\$0
2	\$62,800.00	\$0
3	\$62,800.00	\$0
4	\$62,800.00	\$0
5	\$62,800.00	\$0
6	\$62,800.00	\$0
7	\$0	\$0
8	\$0	\$0
9	\$0	\$0
10	\$0	\$0
Total	\$628,000.00	\$0

The first year of the Initial Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions, revisions to these assumptions may cause consideration of a ‘Contract Price Update’ described below:
 - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
 - b. All prices in this Agreement are calculated based on an Upfront Payment of \$314,000.00 and a Performance Based Payment of \$62,800.00 paid shortly after the end of each of the first five Contract Years of System operations. The Seller posted the SGIP 5% Deposit for this System in the amount of \$33,195.00. The SGIP Program Administrator will refund this deposit directly to Seller shortly after the Commercial Operation Date.
 - c. The System is sized and configured as defined by **Exhibit 2**.
 - d. Total Eligible Project Cost: SGIP program rules require that this Agreement state the Total Eligible Project Cost. The Total Eligible Project Cost for the BESS as defined by SGIP program rules is \$663,900.00
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Seller is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design caused or requested by Host Customer, which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.
6. **Termination Payment Schedule.** In the event of early Termination of the Agreement by Host Customer for reasons other than a Seller Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:
 - a. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form

(ICF) approval letter¹, Host Customer must repay Seller the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Seller to advance development of the System.

- b. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and commencement of the Operating Term, but prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to the amount in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Seller’s actual reasonable cost incurred to remove the System from the Premises. For the avoidance of doubt, Host Customer shall be obligated to pay only the amount corresponding to the year of termination. The Termination Payment obligation shall not be cumulative. Regarding System removal upon early Termination, Seller will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

Operating Term Contract Year	Termination Payment (\$)
1	\$331,950.00
2	\$265,560.00
3	\$199,170.00
4	\$132,780.00
5	\$66,390.00
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

¹ Per the SGIP Handbook, Seller will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

EXHIBIT 2

System Description, Delivery Point, and Premises

- a. **System Location:** 1036 West Main Street, Grass Valley, CA 95945
- b. **System Size (AC kW):** 140 kW
- c. **Expected First Year Energy Capacity (kWh):** 696 kWh
- d. **Expected Installation: Indoor [] Outdoor [X] Location** Near the south side of the existing building on site close to the electrical switchboard located in the dirt not on top of any major utilities. Placement will maintain adequate room for traffic flow and access to building. Bollards to be used to protect equipment.
- e. **Expected Battery Energy Storage System**

Manufacturer/Model	Quantity
Tesla Powerpack 2.5 4h (58kW/232kWh each)	3
Tesla Power Converter Cabinet with three Tesla Powerstages (70kVA each)	1
Tesla Site Controller	1

- f. **Facility and System Description:**
As described in **Exhibit 2, Attachment A**
- g. **Description of Delivery Point:**
The Battery Energy Storage System's interconnection will be a load-side interconnection between the existing main circuit breaker in the Main Service Switchboard (MSB) and the Automatic Transfer Switch (ATS) provided that the existing switchgear is not bus feed from the MSB to the ATS. An electrical site survey during a power outage is required with a licensed electrician to open up the existing panels and confirm the best point of interconnection.
- h. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary:**
As described in **Exhibit 5**
- i. **Description of cost items not included in Contract Price, if any:** None

EXHIBIT 2, Attachment A:

Facility and System Description

The existing facility is used as a headquarters with offices and storage. The site will include one (1) Tesla Site Controller, two (2) Accuvim Meters, and one (1) SEL700G. The Battery Energy Storage System will comprise three (3) Tesla Powerpack 2.5 that will feed a one (1) Tesla Power Converter (PCS). The PCS will feed one (1) Battery panel complete with breakers for all ancillary equipment. The Battery Panel will feed one (1) step-down transformer to convert from BESS 480V to the existing systems 208V. The transformer will feed one (1) utility disconnect. Replace the current Main Circuit Breaker with a shunt trip and recloser circuit breaker.

EXHIBIT 3

Host Customer Information

Within 10 days following the execution of this Agreement, Host Customer will supply Seller with the following information:

Host Customer Information							
Name: Host Customer Nevada Irrigation District					Tax ID: (if applicable)		
Previous & Other Names (if applicable):				Website: www.nidwater.com			
Address: 1036 W Main Street							
City, State, Zip Grass Valley				CA		95945	
Phone Number: 530-273-6185							
Entity Type	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Check One:							X
Property Address for Battery Installation: Address above			State:		Zip Code:	Property Owned by Applicant X YES o NO	
Property Type Water treatment		If Not Applicant, Name of Property Owner, address, phone number and email.					
Information Requested: Please submit the information required below via electronic format to info@gsr-energy.com.							
<u>Corporate Records / Formation Documentation</u> <input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).							
<u>Financial Statements</u> <input type="checkbox"/> If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u> <input type="checkbox"/> Demonstration of Ownership of Premises or Lease with Premises Fee Owner <input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises							
If Host Customer is not Property Owner, Seller may request Host Customer to provide additional documentation to complete the evaluation process. Seller will notify Host Customer if additional information is required.							

EXHIBIT 4

General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Seller, and Seller shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.

2. **Term and Termination.**
 - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date. The Initial Operating Term runs for a period of 10 years, unless earlier terminated or extended as provided in this Agreement (collectively, the “**Contract Term**”).

 - b. **Additional Operating Term.** The Parties may agree in writing to extend this Agreement for one (1) additional 5-year Additional Operating Term at a price to be agreed between the Parties.

 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or financially viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Seller to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.

 - d. **Termination by Host Customer for Delay.** Seller will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Seller fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.

 - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Seller has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Seller has received confirmation of a successful SGIP reservation in an amount not less than 100% of the price for materials and labor for installation of the battery storage system. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the System, Seller will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Seller within seven (7) days of receipt. Each Party has the right to terminate this Agreement, without penalty or fee, if Seller determines after the engineering site audit of the Premises that Seller has misestimated the System’s total cost. Such termination right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Seller informs Host Customer in

writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Seller. Host Customer authorizes Seller to make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. **Billing and Payment; Taxes.**

- a. **Charges.** In accordance with Section 11.a, Host Customer and Seller agree that SGIP Program shall pay Seller as set forth in Section 3 of **Exhibit 1** (the “**Contract Price**”), unless subject to a Contract Price Update specified in Exhibit 1, Section 4.
- b. **Invoices.** Seller shall invoice Host Customer only if and when some amount is due under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Seller is responsible for any incremental personal property taxes imposed on the Host duo to installation of the System (“**Seller’s Taxes**”). Seller shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

4. **Incentives and Environmental Attributes.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Seller in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Host Customer shall not make any filing or statements inconsistent with Seller’s ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Seller. For sake of clarity, Seller will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Seller, Host Customer will immediately pay or deliver such refunded amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits (including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):
- i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility’s electric distribution system.
 - ii. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

Host Customer shall cooperate with Seller’s reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility. Seller shall not encumber the property or facilities of Host Customer with any agreements or other requirements which would survive the expiration or termination of this Agreement without the first obtaining the express written consent of Host Customer to enter such agreements.

- c. **System Design Approval.** Seller shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such thirty (30) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Seller shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer’s approval. If the Host Customer and Seller cannot reasonably agree on an economically viable System design modification, Seller may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation as per **Exhibit 4**, Section 2(a) “**Commencement of Installation**” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure.**
- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure.** If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this

Agreement except: (a) liabilities accrued before termination including Seller's responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Host Customer and Host Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, before expiration of the initial one hundred eighty (180) day period, Seller provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

- iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of the affected Party, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.
- iv. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.

- f. **Commercial Operation.** Seller shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer's reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **System Ownership.** Seller will own System and will use System solely as described in this agreement to provide the System Services as described in **Exhibit 5**. The BESS shall comply with all applicable rules, regulation, and local building codes. The Seller, as owner of the BESS, shall ensure that the manufacturer warranty covers the entire BESS for a minimum of ten (10) years.
- b. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, own, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state of California. The System shall comply with all applicable rules, regulation, and local building codes.
- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Host Customer shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.

- d. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the System's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.
- e. **Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Host Customer shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the System, Host Customer may request relocation of the System under Section 8 hereof. If a temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Host Customer's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- f. **Malfunctions and Emergencies:** Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the System or its operation. In the event of any System emergency condition, or any damage or loss of the use of the Premises or the System, or event or condition that could reasonably be expected to result in physical damages to the Premises, Seller, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- g. **Disconnection.** Host Customer shall not cause or allow a disconnection of the System from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Seller or in response to an emergency situation per Section 6(d).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** Host Customer hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller to perform this Agreement. During the Contract Term, Host Customer shall provide Seller, its employees, contractors and subcontractors with reasonable access to the Premises at mutually agreed upon times to allow Seller to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. All such rights of access shall be coordinated with Host Customer. At Host Customer's request, Seller's access shall be limited to times when a Host Customer agent or employee is present. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the License Term, Host Customer shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to

interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Host Customer shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Host Customer of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property. If a Party fails to cause a Lien that such Party directly or indirectly caused, created, assumed or allowed to exist to be discharged and released of record within the thirty (30) day period required by this Section 7.e.i, the other Party may (but is not required) to cause such discharge and release of record, and the Party responsible for such Lien shall reimburse the costs incurred by the other Party to obtain such discharge and release of record (including, without limitation, reasonable attorneys' fees) within ten (10) business days after the other Party's delivery of an invoice and documentation reasonably supporting the invoiced amount.
 - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(e)(i).

8. **Relocation of System.**

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the System, at Host Customer's cost, in lieu of termination of the Agreement by Seller for a Default Event by Host Customer. If such proposal is

practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer's proposal, Seller may terminate this Agreement pursuant to Section 14(b)(ii).

9. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented warehouse with Seller paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. System Data.

- a. **Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Seller certain data, information, and content (collectively "Equipment Data") through the operation of the System. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Seller may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Seller acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Seller or an agent or affiliate of Seller shall not disclose any knowledge, data or information related to the System and/or Seller's use and ownership of the System. Any such disclosure of data collected from Host Customer shall comply with all applicable requirements of law, including those imposed by the Federal Energy Regulatory Commission, North American Electric Reliability Corporation (NERC) and other federal, state, and local regulations.
- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement), Seller may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Seller with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Such information shall not be shared with third parties, except as expressly approved by Host Customer, and in accordance with all applicable laws, rules, and regulations. Host Customer agrees to allow Seller and Seller affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements. Host Customer agrees to participate in and complete all surveys received from Seller and its Grid Service Entities.

11. SGIP Requirements.

- a. **Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Seller to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Host Customer an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Seller. The financial incentives issued by Host Customer's

SGIP Program Administrator after the System achieves permission to operate from the Utility is called “**SGIP Payments**”. Host Customer agrees to assign all title and interest in SGIP Payments to Seller, identifying Seller as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.

- b. SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2** (“**Upfront Payment**”). The second component is the Performance Based Payment, the balance of the SGIP Payments paid out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Seller will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Payments. A “**Full Cycle**” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the System functions to meet this SGIP requirement.
- c. Administration.** Seller will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Seller shall keep Host Customer reasonably informed of actions, communications, and events concerning SGIP matters, and shall provide Host Customer the opportunity to review and comment upon material filings and communications. Host Customer hereby authorizes Seller, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. Further Assurances.** Seller shall execute such documents relating to such incentives as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Seller.
- e. Appointment as SGIP Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for SGIP (“**SGIP Services Provider**”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Seller all rights to use the System to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the System by Seller (or Seller’s affiliates) may override other System operating modes while preserving key capabilities to provide back-up power and cycling requirements for SGIP. Seller will make any relevant notices and documents available to Host Customer.
- f. SGIP Default.** Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Seller may take any reasonable action to correct its default or to prevent Seller’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Seller for any loss of SGIP benefits Seller suffers and for any return of SGIP refunds Seller must make to program administrators.

12. **Grid Services**

- a. **Purpose.** In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“**Grid Services**”), in each case provided under a “**Grid Program**”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Seller to enroll the System to participate in any Grid Program which may from time to time become available provided that Seller shall operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. In some cases, incentives or payments may be available for participation in a Grid Program (“**Grid Payments**”). Seller will notify Host Customer if Seller will enroll the System in any Grid Program, including what, if any, Grid Payments will be paid to Host Customer, and Host Customer will have thirty (30) days to opt the System out of participating in the Grid Program. If Host Customer does not timely opt out of participating in the Grid Program, the System will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.
- b. **Appointment as Grid Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs (“**Grid Services Provider**”). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances.** Seller shall execute such documents relating to enrollment and participation in Grid Programs as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Seller.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings.** Seller will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer’s utility electricity bill for load served by the System. All savings to Host Customer’s electric bills will accrue to the Host Customer. During the entire term, Host Customer will have access to Tesla Powerhub user interface for observance of battery system performance. Based on Seller’s analysis of Host Customer’s historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Seller estimates Host Customer’s electric bills will be reduced by approximately \$4,499 per year. The Host Customer bills at the site are expected to be reduced by a similar amount each year of the Contract Term.
- b. **Reserved.**
- c. **Tariff Change.** Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Seller of the proposed change so that Seller can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Seller can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non- Defaulting Party**” and each of the following is a “**Default Event**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,
- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Seller’s rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Host Customer to Seller.
 - (2) **Termination by Host Customer.** If Seller is the Defaulting Party and Host Customer

terminates this Agreement, the Termination Payment to Host Customer will be equal to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.

- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Seller.

- i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.
- iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

15. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
 - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Seller the following:
- i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
 - iii. **Accuracy of Information.** All information provided by Host Customer to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.
 - iv. **Host Customer Status.** Host Customer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - v. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.
- c. **Seller's Warranties.**
- i. If Seller damages any other part of the Premises or any Improvement, Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.
 - ii. Seller warrants that the BESS Services as described in **Exhibit 5** will be performed in accordance with this Agreement and shall be free from material defects in workmanship and materials (the "Services Warranty") during the Initial Term (the "Warranty Period").
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Contract Term, the Parties shall maintain the following insurance, as applicable:

Seller's Insurance. As of the Effective Date, Seller shall maintain One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage and naming Host Customer as an additional insured; (b) employer's liability insurance with minimum coverage of at least One Million Dollars (\$1,000,000); (c) automobile liability insurance on all owned, non-owned and/or hired vehicles

used by Seller on Host Customer's Premises and/or directly in connection with the provision of Services in the Agreement with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Before system equipment is delivered to Host Customer site, Seller shall maintain property insurance of the System for the replacement cost thereof.

- i. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Contract Term, Seller shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Seller has the right to file such disclaimer.

- iv. **SNDA**. Upon request, Host Customer shall deliver to Seller a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice**. If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

b. Option to Purchase

- i. **Exercise of Option**. Beginning at the end of the sixth (6th) Operating Term Contract Year and at the end of any subsequent Operating Term Contract Year, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment on that date as set forth in Section 6 of **Exhibit 1**. Host Customer shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days before the end of the relevant Operating Term Contract Year and the purchase shall be completed before the end of the Operating Term Contract Year.
- ii. **Fair Market Value**. The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Host Customer has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the energy storage industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Host Customer does not conclude the purchase, cost of the appraisal will be born solely by the Host Customer.
- iii. **Title Transfer; Warranties; Manuals**. Seller shall transfer good title to the System to Host Customer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Host Customer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Host Customer all System operation and maintenance manuals and logs in Seller's possession and provide Host Customer basic training on the operation and maintenance of the System upon Host Customer's reasonable request. Upon purchase of the System, Host Customer shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 11(d), Seller will have no further liabilities or obligations hereunder for the System.

18. Indemnification and Limitations of Liability

- a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth

in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).

b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. Environmental Indemnification.

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Host Customer’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 18(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. Host Customer Indemnity. Host Customer shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. Limitations on Liability.

- i. No Consequential Damages. Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents

and employees, subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).

- ii. **Actual Damages.** Except for indemnification of Claims pursuant to this Section 18, and coverages provided by the insurance requirements of this Agreement, except as otherwise limited in Section 19, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Host Customer and/or the SGIP Administrator under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

19. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Host Customer in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- b. **Illegality or Impossibility.** If, in Seller's sole discretion, a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

20. Assignment and Financing.

- a. **Assignment.**

- i. Restrictions on Assignment. Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain energy storage systems such as the System.
 - ii. Permitted Assignments. Notwithstanding Section 20(a)(i):
 1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
 2. Host Customer may, and provide prior notice to Seller, assign this Agreement to an affiliate of Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

Host Customer must assign, and provide prior notice to Seller, this Agreement to an affiliate of Host Customer of the Premises. Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.
 - iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. Termination Requires Consent. Seller and Host Customer agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. Confidentiality.

- a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information,

except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

- b. **Permitted Disclosures.** Notwithstanding Section 21(a):
- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
 - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) is subject to disclosure by Host Customer pursuant to the California Public Records Act, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.
- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

22. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and

will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

- b. **Choice of Law; Dispute Resolution**. The law of the state of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in San Francisco, California. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted before arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices**. All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances**. Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers**. No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities**. Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity subject to the jurisdiction of the California Public Utilities Commission. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.
- h. **Service Contract**. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. **No Partnership**. No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.

- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.
- k. Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of **Exhibit 4**

EXHIBIT 5

SYSTEM SERVICES

Energy Services

Backup Power.

The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Seller has approved and connected to the System. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Seller causes the System to discharge, Seller shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Seller will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Seller will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that Seller cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“*Prudent Industry Practices*”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

Demand Charge Management

If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s demand charge management.

Time-Of-Use Management

If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s time-of-use management.

Solar Self-Consumption.

If the System is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

System Performance Monitoring.

Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government

requirements, including but not limited to, compliance with requirements of a utility program and any applicable incentive programs, and/or determine when repair services are necessary. Seller shall provide problem diagnosis, on-site repair and preventative maintenance for the BESS to ensure continued performance of the BESS throughout the Warranty Term.

Amended and Restated Energy Services Agreement

This Amended and Restated Energy Services Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”). This Agreement replaces in its entirety the Energy Services Agreement executed by the Parties on May 11, 2021 and represents the definitive agreement of the Parties.

Host Customer:		Seller:	
Name and Address	Nevada Irrigation District Business Center 1036 W Main Street Grass Valley, CA 95945 Attention: Doug Roderick Site Address 11258 BANNER LAVA CAP RD Nevada City, CA 95959	Name and Address	GSR-BTM LLC 1515 7 th Street #049 Santa Monica, CA 90401 Attention: Phillip Suna
Phone	530-273-6185	Phone	(888) 465-1784
Fax	None	Fax	None
E-mail		E-mail	phillip@swellenergy.com
Premises Ownership	Host Customer [X] owns [] leases the Premises. List Premises Owner, if different from: Host Customer: _____ n/a	Additional Seller Information	
Tax Status	Tax-exempt		
Project Name	E. George WTP		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point, and Premises
- Exhibit 3** Host Customer Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Definition of Services

Host Customer: NEVADA IRRIGATION DISTRICT Seller: GSR-BTM LLC

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT 1

Pricing

1. **Initial Operating Term:** Ten (10) years, beginning on the Commercial Operation Date (the “**Initial Operating Term**”).
2. **Additional Operating Term:** Up to one (1) additional term of five (5) years at a price to be agreed by the Parties beginning on the expiration of the Initial Operating Term (the “**Additional Operating Term**”).
3. **Contract Price:** Self Generation Incentive Program (SGIP) Payments are assigned by Host Customer to Seller and paid by SGIP Program Administrator directly to Seller in accordance with the General Terms and Conditions of this Agreement. The table below delineates anticipated SGIP Payments to be paid directly to Seller by SGIP Program Administrator and payments paid by Host Customer to Seller. Host Customer shall have no obligation whatsoever to pay Seller amounts under the column titled “From SGIP Program Administrator to Seller.” Payments from Host Customer to Seller for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4**

Operating Term Contract Year	\$/year (from SGIP Program Administrator to Seller)	\$/year (from Host Customer)
1	\$220,100.00	\$0
2	\$44,020.00	\$0
3	\$44,020.00	\$0
4	\$44,020.00	\$0
5	\$44,020.00	\$0
6	\$44,020.00	\$0
7	\$0	\$0
8	\$0	\$0
9	\$0	\$0
10	\$0	\$0
Total	\$440,200.00	\$0

The first year of the Initial Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions, revisions to these assumptions may cause consideration of a ‘Contract Price Update’ described below:
 - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
 - a. All prices in this Agreement are calculated based on an Upfront Payment of \$220,100.00 and a Performance Based Payment of \$44,020.00 paid shortly after the end of each of the first five Contract Years of System operations. The Seller posted the SGIP 5% Deposit for this System in the amount of \$22,010. The SGIP Program Administrator will refund this deposit directly to Seller shortly after the Commercial Operation Date.
 - b. The System is sized and configured as defined by **Exhibit 2**.
 - c. Total Eligible Project Cost: SGIP program rules require that this Agreement state the Total Eligible Project Cost. The Total Eligible Project Cost for the BESS as defined by SGIP program rules is \$440,200.00.
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Seller is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design caused or requested by Host Customer, which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.

6. Termination Payment Schedule. In the event of early Termination of the Agreement by Host Customer for reasons other than a Seller Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:

- b. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter¹, Host Customer must repay Seller the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Seller to advance development of the System.
- a. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and commencement of the Operating Term, but prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to the amount in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Seller’s actual reasonable cost incurred to remove the System from the Premises. For the avoidance of doubt, Host Customer shall be obligated to pay only the amount corresponding to the year of termination. The Termination Payment obligation shall not be cumulative. Regarding System removal upon early Termination, Seller will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

Operating Term Contract Year	Termination Payment (\$)
1	\$220,100.00
2	\$176,080.00
3	\$132,060.00
4	\$88,040.00
5	\$44,020.00
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

¹ Per the SGIP Handbook, Seller will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

EXHIBIT 2

System Description, Delivery Point, and Premises

- a. **System Location:** 11258 Banner Lava Cap Road, Nevada City, CA 95959
- b. **System Size (AC kW):** 116kW
- c. **Expected First Year Energy Capacity (kWh):** 464 kWh
- d. **Expected Installation: Indoor [] Outdoor [X] Location** Near the south side of the existing building on site close to the electrical switchboard located in the dirt not on top of any major utilities. Placement will maintain adequate room for traffic flow and access to building. Bollards to be used to protect equipment.
- e. **Expected Battery Energy Storage System**

Manufacturer/Model	Quantity
Tesla Powerpack 4-hr	2

- f. **Facility and System Description:** See Exhibit 2, Attachment A
- g. **Description of Delivery Point:** Equipment to tie-in to main service switchboard after existing main disconnect. A relay is to be used on main disconnect to isolate the mains service switchboard from the grid if the existing disconnect can be controlled by a shunt trip and mechanical recloser. Other means might be necessary to isolate the system if the disconnect cannot be remotely controlled.
- h. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary:** The system is being designed to cover the existing peak demand loads and will backup the main distribution switchboard as it is currently loaded. No additional circuit relocation will be required.
- i. **Description of cost items not included in Contract Price, if any:** None

EXHIBIT 2, Attachment A:

Facility and System Description

Gravity flow water treatment plant. Installation of two (2) Tesla Powerpack 4-hr with one (1) Tesla Power Converter cabinet housing two 70kVA Tesla Powerstages. The system is to be controlled by one (1) Tesla Site Controller that will monitor battery output and site demand using two (2) Accuvim IIR meters. Power converter to feed one (1) generation subpanel with circuits to power the controller and meters. The generation subpanel to feed a utility approved fused disconnect located within 10' of the existing meter; disconnect can be used to manually shutdown the battery system. The disconnect will feed the main service switchboard. One (1) SEL 700G relay controlled by the controller will be installed to remotely operate the existing 800A main disconnect for isolation purpose: main disconnect will continue to remain operational as a manual shutoff for the site. All equipment to be installed on concrete pad with seismic anchors to meet code. Equipment to be protected with bollards on all sides exposed to vehicle traffic.

EXHIBIT 3

Host Customer Information

Within 10 days following the execution of this Agreement, Host Customer will supply Seller with the following information:

Host Customer Information							
Name: Host Customer Nevada Irrigation District					Tax ID: (if applicable)		
Previous & Other Names (if applicable):				Website: www.nidwater.com			
Address: 1036 W Main Street							
City, State, Zip Grass Valley				CA		95945	
Phone Number: 530-273-6185							
Entity Type	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Check One:							rX
Property Address for Battery Installation: Address above			State:		Zip Code:	Property Owned by Applicant <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
Property Type Water treatment		If Not Applicable, Name of Property Owner, address, phone number and email.					
Information Requested: Please submit the information required below via electronic format to info@gsr-energy.com.							
<u>Corporate Records / Formation Documentation</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u>							
<input type="checkbox"/> Demonstration of Ownership of Premises or Lease with Premises Fee Owner							
<input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises							
If Host Customer is not Property Owner, Seller may request Host Customer to provide additional documentation to complete the evaluation process. Seller will notify Host Customer if additional information is required.							

EXHIBIT 4

General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Seller, and Seller shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.

2. **Term and Termination.**
 - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date. The Initial Operating Term runs for a period of 10 years, unless earlier terminated or extended as provided in this Agreement (collectively, the “**Contract Term**”).

 - b. **Additional Operating Term.** The Parties may agree in writing to extend this Agreement for one (1) additional 5-year Additional Operating Term at a price to be agreed between the Parties.

 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or financially viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Seller to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.

 - d. **Termination by Host Customer for Delay.** Seller will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Seller fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.

 - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Seller has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Seller has received confirmation of a successful SGIP reservation in an amount not less than 100% of the price for materials and labor for installation of the battery storage system. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the System, Seller will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Seller within seven (7) days of receipt. Each Party has the right to terminate this Agreement, without penalty or fee, if Seller determines after the engineering site audit of the Premises that Seller has misestimated the System’s total cost. Such termination right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Seller informs Host Customer in

writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Seller. Host Customer authorizes Seller to make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. **Billing and Payment; Taxes.**

- a. **Charges.** In accordance with Section 11.a, Host Customer and Seller agree that SGIP Program shall pay Seller as set forth in Section 3 of **Exhibit 1** (the “**Contract Price**”), unless subject to a Contract Price Update specified in Exhibit 1, Section 4.
- b. **Invoices.** Seller shall invoice Host Customer only if and when some amount is due under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Seller is responsible for any incremental personal property taxes imposed on the Host duo to installation of the System (“**Seller’s Taxes**”). Seller shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

4. **Incentives and Environmental Attributes.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Seller in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Host Customer shall not make any filing or statements inconsistent with Seller’s ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Seller. For sake of clarity, Seller will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Seller, Host Customer will immediately pay or deliver such refunded amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits (including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):
- i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility’s electric distribution system.
 - ii. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

Host Customer shall cooperate with Seller’s reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility. Seller shall not encumber the property or facilities of Host Customer with any agreements or other requirements which would survive the expiration or termination of this Agreement without the first obtaining the express written consent of Host Customer to enter such agreements.

- c. **System Design Approval.** Seller shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such thirty (30) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Seller shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer’s approval. If the Host Customer and Seller cannot reasonably agree on an economically viable System design modification, Seller may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation as per **Exhibit 4**, Section 2(a) “**Commencement of Installation**” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure.**
- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure.** If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this

Agreement except: (a) liabilities accrued before termination including Seller's responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Host Customer and Host Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, before expiration of the initial one hundred eighty (180) day period, Seller provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

- iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of the affected Party, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.
- iv. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.

- f. **Commercial Operation.** Seller shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer's reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **System Ownership.** Seller will own System and will use System solely as described in this agreement to provide the System Services as described in **Exhibit 5**. The BESS shall comply with all applicable rules, regulation, and local building codes. The Seller, as owner of the BESS, shall ensure that the manufacturer warranty covers the entire BESS for a minimum of ten (10) years.
- b. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, own, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state of California. The System shall comply with all applicable rules, regulation, and local building codes.
- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Host Customer shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.

- d. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the System's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.
- e. **Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Host Customer shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the System, Host Customer may request relocation of the System under Section 8 hereof. If a temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Host Customer's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- f. **Malfunctions and Emergencies:** Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the System or its operation. In the event of any System emergency condition, or any damage or loss of the use of the Premises or the System, or event or condition that could reasonably be expected to result in physical damages to the Premises, Seller, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- g. **Disconnection.** Host Customer shall not cause or allow a disconnection of the System from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Seller or in response to an emergency situation per Section 6(d).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** Host Customer hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller to perform this Agreement. During the Contract Term, Host Customer shall provide Seller, its employees, contractors and subcontractors with reasonable access to the Premises at mutually agreed upon times to allow Seller to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. All such rights of access shall be coordinated with Host Customer. At Host Customer's request, Seller's access shall be limited to times when a Host Customer agent or employee is present. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the License Term, Host Customer shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to

interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Host Customer shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Host Customer of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property. If a Party fails to cause a Lien that such Party directly or indirectly caused, created, assumed or allowed to exist to be discharged and released of record within the thirty (30) day period required by this Section 7.e.i, the other Party may (but is not required) to cause such discharge and release of record, and the Party responsible for such Lien shall reimburse the costs incurred by the other Party to obtain such discharge and release of record (including, without limitation, reasonable attorneys' fees) within ten (10) business days after the other Party's delivery of an invoice and documentation reasonably supporting the invoiced amount.
 - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(e)(i).

8. **Relocation of System.**

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the System, at Host Customer's cost, in lieu of termination of the Agreement by Seller for a Default Event by Host Customer. If such proposal is

practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer's proposal, Seller may terminate this Agreement pursuant to Section 14(b)(ii).

9. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented warehouse with Seller paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. System Data.

- a. **Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Seller certain data, information, and content (collectively "Equipment Data") through the operation of the System. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Seller may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Seller acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Seller or an agent or affiliate of Seller shall not disclose any knowledge, data or information related to the System and/or Seller's use and ownership of the System. Any such disclosure of data collected from Host Customer shall comply with all applicable requirements of law, including those imposed by the Federal Energy Regulatory Commission, North American Electric Reliability Corporation (NERC) and other federal, state, and local regulations.
- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement), Seller may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Seller with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Such information shall not be shared with third parties, except as expressly approved by Host Customer, and in accordance with all applicable laws, rules, and regulations. Host Customer agrees to allow Seller and Seller affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements. Host Customer agrees to participate in and complete all surveys received from Seller and its Grid Service Entities.

11. SGIP Requirements.

- a. **Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Seller to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Host Customer an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Seller. The financial incentives issued by Host Customer's

SGIP Program Administrator after the System achieves permission to operate from the Utility is called “**SGIP Payments**”. Host Customer agrees to assign all title and interest in SGIP Payments to Seller, identifying Seller as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.

- b. SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2** (“**Upfront Payment**”). The second component is the Performance Based Payment, the balance of the SGIP Payments paid out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Seller will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Payments. A “**Full Cycle**” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the System functions to meet this SGIP requirement.
- c. Administration.** Seller will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Seller shall keep Host Customer reasonably informed of actions, communications, and events concerning SGIP matters, and shall provide Host Customer the opportunity to review and comment upon material filings and communications. Host Customer hereby authorizes Seller, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. Further Assurances.** Seller shall execute such documents relating to such incentives as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Seller.
- e. Appointment as SGIP Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for SGIP (“**SGIP Services Provider**”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Seller all rights to use the System to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the System by Seller (or Seller’s affiliates) may override other System operating modes while preserving key capabilities to provide back-up power and cycling requirements for SGIP. Seller will make any relevant notices and documents available to Host Customer.
- f. SGIP Default.** Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Seller may take any reasonable action to correct its default or to prevent Seller’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Seller for any loss of SGIP benefits Seller suffers and for any return of SGIP refunds Seller must make to program administrators.

12. **Grid Services**

- a. **Purpose.** In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“**Grid Services**”, in each case provided under a “**Grid Program**”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Seller to enroll the System to participate in any Grid Program which may from time to time become available provided that Seller shall operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. In some cases, incentives or payments may be available for participation in a Grid Program (“**Grid Payments**”). Seller will notify Host Customer if Seller will enroll the System in any Grid Program, including what, if any, Grid Payments will be paid to Host Customer, and Host Customer will have thirty (30) days to opt the System out of participating in the Grid Program. If Host Customer does not timely opt out of participating in the Grid Program, the System will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.
- b. **Appointment as Grid Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs (“**Grid Services Provider**”). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances.** Seller shall execute such documents relating to enrollment and participation in Grid Programs as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Seller.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings.** Seller will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer’s utility electricity bill for load served by the System. All savings to Host Customer’s electric bills will accrue to the Host Customer. During the entire term, Host Customer will have access to Tesla Powerhub user interface for observance of battery system performance. Based on Seller’s analysis of Host Customer’s historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Seller estimates Host Customer’s electric bills will be reduced by approximately \$8,523 per year. The Host Customer bills at the site are expected to be reduced by a similar amount each year of the Contract Term.
- b. **Reserved.**
- c. **Tariff Change.** Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Seller of the proposed change so that Seller can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Seller can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non- Defaulting Party**” and each of the following is a “**Default Event**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,
- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Seller’s rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Host Customer to Seller.
 - (2) **Termination by Host Customer.** If Seller is the Defaulting Party and Host Customer

terminates this Agreement, the Termination Payment to Host Customer will be equal to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.

iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Seller.

i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.

iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

15. **Representations and Warranties.**

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

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

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Seller the following:
- i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
 - iii. **Accuracy of Information.** All information provided by Host Customer to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.
 - iv. **Host Customer Status.** Host Customer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - v. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.
- c. **Seller's Warranties.**
- i. If Seller damages any other part of the Premises or any Improvement, Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.
 - ii. Seller warrants that the BESS Services as described in **Exhibit 5** will be performed in accordance with this Agreement and shall be free from material defects in workmanship and materials (the "Services Warranty") during the Initial Term (the "Warranty Period").
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Contract Term, the Parties shall maintain the following insurance, as applicable:

Seller's Insurance. As of the Effective Date, Seller shall maintain One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage and naming Host Customer as an additional insured; (b) employer's liability insurance with minimum coverage of at least One Million Dollars (\$1,000,000); (c) automobile liability insurance on all owned, non-owned and/or hired vehicles

used by Seller on Host Customer's Premises and/or directly in connection with the provision of Services in the Agreement with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Before system equipment is delivered to Host Customer site, Seller shall maintain property insurance of the System for the replacement cost thereof.

- i. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Contract Term, Seller shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Seller has the right to file such disclaimer.

- iv. **SNDA**. Upon request, Host Customer shall deliver to Seller a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice**. If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

b. Option to Purchase

- i. **Exercise of Option**. Beginning at the end of the sixth (6th) Operating Term Contract Year and at the end of any subsequent Operating Term Contract Year, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment on that date as set forth in Section 6 of **Exhibit 1**. Host Customer shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days before the end of the relevant Operating Term Contract Year and the purchase shall be completed before the end of the Operating Term Contract Year.
- ii. **Fair Market Value**. The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Host Customer has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the energy storage industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Host Customer does not conclude the purchase, cost of the appraisal will be born solely by the Host Customer.
- iii. **Title Transfer; Warranties; Manuals**. Seller shall transfer good title to the System to Host Customer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Host Customer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Host Customer all System operation and maintenance manuals and logs in Seller's possession and provide Host Customer basic training on the operation and maintenance of the System upon Host Customer's reasonable request. Upon purchase of the System, Host Customer shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 11(d), Seller will have no further liabilities or obligations hereunder for the System.

18. Indemnification and Limitations of Liability

- a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth

in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).

b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. Environmental Indemnification.

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Host Customer’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 18(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. Host Customer Indemnity. Host Customer shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. Limitations on Liability.

- i. No Consequential Damages. Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents

and employees, subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).

- ii. **Actual Damages.** Except for indemnification of Claims pursuant to this Section 18, and coverages provided by the insurance requirements of this Agreement, except as otherwise limited in Section 19, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Host Customer and/or the SGIP Administrator under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

19. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Host Customer in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- b. **Illegality or Impossibility.** If, in Seller's sole discretion, a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

20. Assignment and Financing.

- a. **Assignment.**

- i. Restrictions on Assignment. Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain energy storage systems such as the System.
 - ii. Permitted Assignments. Notwithstanding Section 20(a)(i):
 1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
 2. Host Customer may, and provide prior notice to Seller, assign this Agreement to an affiliate of Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

Host Customer must assign, and provide prior notice to Seller, this Agreement to an affiliate of Host Customer of the Premises. Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.
 - iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.
- b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. Termination Requires Consent. Seller and Host Customer agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. Confidentiality.

- a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information,

except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

- b. **Permitted Disclosures.** Notwithstanding Section 21(a):
- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
 - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) is subject to disclosure by Host Customer pursuant to the California Public Records Act, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.
- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

22. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and

will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

- b. **Choice of Law; Dispute Resolution**. The law of the state of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in San Francisco, California. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted before arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices**. All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances**. Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers**. No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities**. Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity subject to the jurisdiction of the California Public Utilities Commission. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.
- h. **Service Contract**. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. **No Partnership**. No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.

- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.
- k. Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of **Exhibit 4**

EXHIBIT 5

SYSTEM SERVICES

Energy Services

Backup Power.

The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Seller has approved and connected to the System. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Seller causes the System to discharge, Seller shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Seller will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Seller will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that Seller cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“*Prudent Industry Practices*”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

Demand Charge Management

If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s demand charge management.

Time-Of-Use Management.

If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s time-of-use management.

Solar Self-Consumption.

If the System is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

System Performance Monitoring.

Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government requirements, including but not limited to, compliance with requirements of a utility program and any applicable

incentive programs, and/or determine when repair services are necessary. Seller shall provide problem diagnosis, on-site repair and preventative maintenance for the BESS to ensure continued performance of the BESS throughout the Warranty Term.

Amended and Restated Energy Services Agreement

This Amended and Restated Energy Services Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”). This Agreement replaces in its entirety the Energy Services Agreement executed by the Parties on May 11, 2021 as amended on August 10, 2021 and represents the definitive agreement of the Parties.

Host Customer:		Seller:	
Name and Address	Nevada Irrigation District Business Center 1036 W Main Street Grass Valley, CA 95945 Attention: Doug Roderick Site Address: 13733 Loma Rica Drive Grass Valley, CA 95945	Name and Address	GSR-BTM LLC 1515 7 th Street #049 Santa Monica, CA 90401 Attention: Phillip Suna
Phone	530-273-6185	Phone	(888) 465-1784
Fax	None	Fax	None
E-mail		E-mail	phillip@swellenergy.com
Premises Ownership	Host Customer [X] owns [] leases the Premises. List Premises Owner, if different from: Host Customer: _____ n/a _____	Additional Seller Information	
Tax Status	Tax-exempt		
Project Name	Loma Rica Water Plant		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point, and Premises
- Exhibit 3** Host Customer Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Definition of Services

Host Customer: NEVADA IRRIGATION DISTRICT Seller: GSR-BTM LLC

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT 1

Pricing

1. **Initial Operating Term:** Ten (10) years, beginning on the Commercial Operation Date (the “**Initial Operating Term**”).
2. **Additional Operating Term:** Up to one (1) additional term of five (5) years at a price to be agreed by the Parties beginning on the expiration of the Initial Operating Term (the “**Additional Operating Term**”).
3. **Contract Price:** Self Generation Incentive Program (SGIP) Payments are assigned by Host Customer to Seller and paid by SGIP Program Administrator directly to Seller in accordance with the General Terms and Conditions of this Agreement. The table below delineates anticipated SGIP Payments to be paid directly to Seller by SGIP Program Administrator and payments paid by Host Customer to Seller. Host Customer shall have no obligation whatsoever to pay Seller amounts under the column titled “From SGIP Program Administrator to Seller.” Payments from Host Customer to Seller for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4**

Operating Term Contract Year	\$/year (from SGIP Program Administrator to Seller)	\$/year (from Host Customer)
1	\$219,925.00	\$0
2	\$43,985.00	\$0
3	\$43,985.00	\$0
4	\$43,985.00	\$0
5	\$43,985.00	\$0
6	\$43,985.00	\$0
7	\$0	\$0
8	\$0	\$0
9	\$0	\$0
10	\$0	\$0
Total	\$439,850.00	\$0

The first year of the Initial Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions, revisions to these assumptions may cause consideration of a ‘Contract Price Update’ described below:
 - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
 - a. All prices in this Agreement are calculated based on an Upfront Payment of \$219,925.00 and a Performance Based Payment of \$43,985.00 paid shortly after the end of each of the first five Contract Years of System operations. The Seller posted the SGIP 5% Deposit for this System in the amount of \$21,992.50. The SGIP Program Administrator will refund this deposit directly to Seller shortly after the Commercial Operation Date.
 - b. The System is sized and configured as defined by **Exhibit 2**.
 - c. Total Eligible Project Cost: SGIP program rules require that this Agreement state the Total Eligible Project Cost. The Total Eligible Project Cost for the BESS as defined by SGIP program rules is \$439,850.00.
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Seller is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design caused or requested by Host Customer, which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.

6. Termination Payment Schedule. In the event of early Termination of the Agreement by Host Customer for reasons other than a Seller Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:

- b. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter¹, Host Customer must repay Seller the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Seller to advance development of the System.
- a. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and commencement of the Operating Term, but prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to the amount in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Seller’s actual reasonable cost incurred to remove the System from the Premises. For the avoidance of doubt, Host Customer shall be obligated to pay only the amount corresponding to the year of termination. The Termination Payment obligation shall not be cumulative. Regarding System removal upon early Termination, Seller will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

Operating Term Contract Year	Termination Payment (\$)
1	\$219,925.00
2	\$175,940.00
3	\$131,955.00
4	\$87,970.00
5	\$43,985.00
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

¹ Per the SGIP Handbook, Seller will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

EXHIBIT 2

System Description, Delivery Point, and Premises

- a. **System Location:** 13733 Loma Rica Drive Grass Valley, CA 95945
- b. **System Size (AC kW):** 116kW
- c. **Expected First Year Energy Capacity (kWh):** 464 kWh
- d. **Expected Installation: Indoor [] Outdoor [X] Location** Near the south side of the existing building on site close to the electrical switchboard located in the dirt not on top of any major utilities. Placement will maintain adequate room for traffic flow and access to building. Bollards to be used to protect equipment.
- e. **Expected Battery Energy Storage System**

Manufacturer/Model	Quantity
Tesla Powerpack 4-hr	2

- f. **Facility and System Description:** As described in **Exhibit 2, Attachment A**
- g. **Description of Delivery Point:** Equipment to tie-in to main service switchboard after existing main disconnect. A relay is to be used on main disconnect to isolate the mains service switchboard from the grid if the existing disconnect can be controlled by a shunt trip and mechanical recloser. Other means might be necessary to isolate the system if the disconnect cannot be remotely controlled.
- h. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary:** The system is being designed to cover the existing peak demand loads and will backup the main distribution switchboard as it is currently loaded. No additional circuit relocation will be required.
- i. **Description of cost items not included in Contract Price, if any:** None

EXHIBIT 2, Attachment A:

Facility and System Description

Pressure filter water treatment plant. Installation of two (2) Tesla Powerpack 4-hr with one (1) Tesla Power Converter cabinet housing two 70kVA Tesla Powerstages. The system is to be controlled by one (1) Tesla Site Controller that will monitor battery output and site demand using two (2) Accuvim IIR meters. Power converter to feed one (1) generation subpanel with circuits to power the controller and meters. The generation subpanel to feed a utility approved fused disconnect located within 10' of the existing meter; disconnect can be used to manually shutdown the battery system. The disconnect will feed the main service switchboard. One (1) SEL 700G relay controlled by the controller will be installed to remotely operate the existing 800A main disconnect for isolation purpose: main disconnect will continue to remain operational as a manual shutoff for the site. All equipment to be installed on concrete pad with seismic anchors to meet code. Equipment to be protected with bollards on all sides exposed to vehicle traffic.

EXHIBIT 3

Host Customer Information

Within 10 days following the execution of this Agreement, Host Customer will supply Seller with the following information:

Host Customer Information							
Name: Host Customer Nevada Irrigation District					Tax ID: (if applicable)		
Previous & Other Names (if applicable):				Website: www.nidwater.com			
Address: 1036 W Main Street							
City, State, Zip Grass Valley				CA		95945	
Phone Number: 530-273-6185							
Entity Type	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Check One:							rX
Property Address for Battery Installation: Address above			State:		Zip Code:	Property Owned by Applicant <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
Property Type Water treatment		If Not Applicable, Name of Property Owner, address, phone number and email.					
Information Requested: Please submit the information required below via electronic format to info@gsr-energy.com.							
<u>Corporate Records / Formation Documentation</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u>							
<input type="checkbox"/> Demonstration of Ownership of Premises or Lease with Premises Fee Owner							
<input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises							
If Host Customer is not Property Owner, Seller may request Host Customer to provide additional documentation to complete the evaluation process. Seller will notify Host Customer if additional information is required.							

EXHIBIT 4

General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Seller, and Seller shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.

2. **Term and Termination.**
 - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date. The Initial Operating Term runs for a period of 10 years, unless earlier terminated or extended as provided in this Agreement (collectively, the “**Contract Term**”).

 - b. **Additional Operating Term.** The Parties may agree in writing to extend this Agreement for one (1) additional 5-year Additional Operating Term at a price to be agreed between the Parties.

 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or financially viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Seller to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.

 - d. **Termination by Host Customer for Delay.** Seller will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Seller fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.

 - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Seller has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Seller has received confirmation of a successful SGIP reservation in an amount not less than 100% of the price for materials and labor for installation of the battery storage system. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the System, Seller will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Seller within seven (7) days of receipt. Each Party has the right to terminate this Agreement, without penalty or fee, if Seller determines after the engineering site audit of the Premises that Seller has misestimated the System’s total cost. Such termination right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Seller informs Host Customer in

writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Seller. Host Customer authorizes Seller to make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. **Billing and Payment; Taxes.**

- a. **Charges.** In accordance with Section 11.a, Host Customer and Seller agree that SGIP Program shall pay Seller as set forth in Section 3 of **Exhibit 1** (the “**Contract Price**”), unless subject to a Contract Price Update specified in Exhibit 1, Section 4.
- b. **Invoices.** Seller shall invoice Host Customer only if and when some amount is due under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Seller is responsible for any incremental personal property taxes imposed on the Host duo to installation of the System (“**Seller’s Taxes**”). Seller shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

4. **Incentives and Environmental Attributes.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Seller in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Host Customer shall not make any filing or statements inconsistent with Seller’s ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Seller. For sake of clarity, Seller will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Seller, Host Customer will immediately pay or deliver such refunded amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits (including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. **Project Completion**

- a. **Project Development**. Seller shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals**. Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):
 - i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility’s electric distribution system.
 - ii. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

Host Customer shall cooperate with Seller’s reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility. Seller shall not encumber the property or facilities of Host Customer with any agreements or other requirements which would survive the expiration or termination of this Agreement without the first obtaining the express written consent of Host Customer to enter such agreements.

- c. **System Design Approval**. Seller shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such thirty (30) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Seller shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer’s approval. If the Host Customer and Seller cannot reasonably agree on an economically viable System design modification, Seller may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation**. Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation as per **Exhibit 4**, Section 2(a) “**Commencement of Installation**” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure**.
 - i. **Force Majeure Event**. If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure**. If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this

Agreement except: (a) liabilities accrued before termination including Seller's responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Host Customer and Host Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, before expiration of the initial one hundred eighty (180) day period, Seller provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

- iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of the affected Party, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.
- iv. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.

- f. **Commercial Operation.** Seller shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer's reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **System Ownership.** Seller will own System and will use System solely as described in this agreement to provide the System Services as described in **Exhibit 5**. The BESS shall comply with all applicable rules, regulation, and local building codes. The Seller, as owner of the BESS, shall ensure that the manufacturer warranty covers the entire BESS for a minimum of ten (10) years.
- b. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, own, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state of California. The System shall comply with all applicable rules, regulation, and local building codes.
- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Host Customer shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.

- d. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the System's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.
- e. **Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Host Customer shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the System, Host Customer may request relocation of the System under Section 8 hereof. If a temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Host Customer's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- f. **Malfunctions and Emergencies:** Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the System or its operation. In the event of any System emergency condition, or any damage or loss of the use of the Premises or the System, or event or condition that could reasonably be expected to result in physical damages to the Premises, Seller, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- g. **Disconnection.** Host Customer shall not cause or allow a disconnection of the System from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Seller or in response to an emergency situation per Section 6(d).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** Host Customer hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller to perform this Agreement. During the Contract Term, Host Customer shall provide Seller, its employees, contractors and subcontractors with reasonable access to the Premises at mutually agreed upon times to allow Seller to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. All such rights of access shall be coordinated with Host Customer. At Host Customer's request, Seller's access shall be limited to times when a Host Customer agent or employee is present. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the License Term, Host Customer shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to

interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Host Customer shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Host Customer of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property. If a Party fails to cause a Lien that such Party directly or indirectly caused, created, assumed or allowed to exist to be discharged and released of record within the thirty (30) day period required by this Section 7e.i, the other Party may (but is not required) to cause such discharge and release of record, and the Party responsible for such Lien shall reimburse the costs incurred by the other Party to obtain such discharge and release of record (including, without limitation, reasonable attorneys' fees) within ten (10) business days after the other Party's delivery of an invoice and documentation reasonably supporting the invoiced amount.
 - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(e)(i).

8. **Relocation of System.**

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the System, at Host Customer's cost, in lieu of termination of the Agreement by Seller for a Default Event by Host Customer. If such proposal is

practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer's proposal, Seller may terminate this Agreement pursuant to Section 14(b)(ii).

9. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented warehouse with Seller paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. System Data.

- a. Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Seller certain data, information, and content (collectively "Equipment Data") through the operation of the System. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Seller may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Seller acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Seller or an agent or affiliate of Seller shall not disclose any knowledge, data or information related to the System and/or Seller's use and ownership of the System. Any such disclosure of data collected from Host Customer shall comply with all applicable requirements of law, including those imposed by the Federal Energy Regulatory Commission, North American Electric Reliability Corporation (NERC) and other federal, state, and local regulations.
- b. Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement), Seller may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Seller with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Such information shall not be shared with third parties, except as expressly approved by Host Customer, and in accordance with all applicable laws, rules, and regulations. Host Customer agrees to allow Seller and Seller affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements. Host Customer agrees to participate in and complete all surveys received from Seller and its Grid Service Entities.

11. SGIP Requirements.

- a. Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Seller to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Host Customer an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Seller. The financial incentives issued by Host Customer's SGIP Program Administrator after the System achieves permission to operate from the Utility is

called “**SGIP Payments**”. Host Customer agrees to assign all title and interest in SGIP Payments to Seller, identifying Seller as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.

- b. SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2 (“Upfront Payment”)**. The second component is the Performance Based Payment, the balance of the SGIP Payments paid out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Seller will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Payments. A “**Full Cycle**” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the System functions to meet this SGIP requirement.
- c. Administration.** Seller will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Seller shall keep Host Customer reasonably informed of actions, communications, and events concerning SGIP matters, and shall provide Host Customer the opportunity to review and comment upon material filings and communications. Host Customer hereby authorizes Seller, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. Further Assurances.** Seller shall execute such documents relating to such incentives as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Seller.
- e. Appointment as SGIP Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for SGIP (“**SGIP Services Provider**”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Seller all rights to use the System to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the System by Seller (or Seller’s affiliates) may override other System operating modes while preserving key capabilities to provide back-up power and cycling requirements for SGIP. Seller will make any relevant notices and documents available to Host Customer.
- f. SGIP Default.** Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Seller may take any reasonable action to correct its default or to prevent Seller’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Seller for any loss of SGIP benefits Seller suffers and for any return of SGIP refunds Seller must make to program administrators.

12. **Grid Services**

- a. **Purpose**. In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“**Grid Services**”, in each case provided under a “**Grid Program**”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Seller to enroll the System to participate in any Grid Program which may from time to time become available provided that Seller shall operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. In some cases, incentives or payments may be available for participation in a Grid Program (“**Grid Payments**”). Seller will notify Host Customer if Seller will enroll the System in any Grid Program, including what, if any, Grid Payments will be paid to Host Customer, and Host Customer will have thirty (30) days to opt the System out of participating in the Grid Program. If Host Customer does not timely opt out of participating in the Grid Program, the System will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.
- b. **Appointment as Grid Services Provider**. Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs (“**Grid Services Provider**”). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances**. Seller shall execute such documents relating to enrollment and participation in Grid Programs as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Seller.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings**. Seller will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer’s utility electricity bill for load served by the System. All savings to Host Customer’s electric bills will accrue to the Host Customer. During the entire term, Host Customer will have access to Tesla Powerhub user interface for observance of battery system performance. Based on Seller’s analysis of Host Customer’s historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Seller estimates Host Customer’s electric bills will be reduced by approximately \$7,246 per year. The Host Customer bills at the site are expected to be reduced by a similar amount each year of the Contract Term.
- a. **Reserved**.
- b. **Tariff Change**. Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Seller of the proposed change so that Seller can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Seller can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages**

- a. **Default**. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non- Defaulting Party**” and each of the following is a “**Default Event**”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,
- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Seller’s rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the “**Termination Payment**”):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Host Customer to Seller.
 - (2) **Termination by Host Customer.** If Seller is the Defaulting Party and Host Customer

terminates this Agreement, the Termination Payment to Host Customer will be equal to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.

iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Seller.

i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.

ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.

iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

15. **Representations and Warranties.**

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

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

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Seller the following:
- i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
 - iii. **Accuracy of Information.** All information provided by Host Customer to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.
 - iv. **Host Customer Status.** Host Customer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
 - v. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.
- c. **Seller's Warranties.**
- i. If Seller damages any other part of the Premises or any Improvement, Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.
 - ii. Seller warrants that the BESS Services as described in **Exhibit 5** will be performed in accordance with this Agreement and shall be free from material defects in workmanship and materials (the "Services Warranty") during the Initial Term (the "Warranty Period").
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Contract Term, the Parties shall maintain the following insurance, as applicable:

Seller's Insurance. As of the Effective Date, Seller shall maintain One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage and naming Host Customer as an additional insured; (b) employer's liability insurance with minimum coverage of at least One Million Dollars (\$1,000,000); (c) automobile liability insurance on all owned, non-owned and/or hired vehicles

used by Seller on Host Customer's Premises and/or directly in connection with the provision of Services in the Agreement with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Before system equipment is delivered to Host Customer site, Seller shall maintain property insurance of the System for the replacement cost thereof.

- i. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Contract Term, Seller shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Seller has the right to file such disclaimer.

- iv. **SNDA**. Upon request, Host Customer shall deliver to Seller a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice**. If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

b. Option to Purchase

- i. **Exercise of Option**. Beginning at the end of the sixth (6th) Operating Term Contract Year and at the end of any subsequent Operating Term Contract Year, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment on that date as set forth in Section 6 of **Exhibit 1**. Host Customer shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days before the end of the relevant Operating Term Contract Year and the purchase shall be completed before the end of the Operating Term Contract Year.
- ii. **Fair Market Value**. The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Host Customer has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the energy storage industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Host Customer does not conclude the purchase, cost of the appraisal will be born solely by the Host Customer.
- iii. **Title Transfer; Warranties; Manuals**. Seller shall transfer good title to the System to Host Customer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Host Customer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Host Customer all System operation and maintenance manuals and logs in Seller's possession and provide Host Customer basic training on the operation and maintenance of the System upon Host Customer's reasonable request. Upon purchase of the System, Host Customer shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 11(d), Seller will have no further liabilities or obligations hereunder for the System.

18. Indemnification and Limitations of Liability

- a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth

in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).

b. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. Environmental Indemnification.

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Host Customer’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 18(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. Host Customer Indemnity. Host Customer shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. Limitations on Liability.

- i. No Consequential Damages. Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents

and employees, subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).

- ii. **Actual Damages.** Except for indemnification of Claims pursuant to this Section 18, and coverages provided by the insurance requirements of this Agreement, except as otherwise limited in Section 19, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Host Customer and/or the SGIP Administrator under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

19. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Host Customer in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- b. **Illegality or Impossibility.** If, in Seller's sole discretion, a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

20. Assignment and Financing.

- a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain energy storage systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 20(a)(i):
 1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
 2. Host Customer may, and provide prior notice to Seller, assign this Agreement to an affiliate of Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

Host Customer must assign, and provide prior notice to Seller, this Agreement to an affiliate of Host Customer of the Premises. Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.
- c. **Termination Requires Consent.** Seller and Host Customer agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. **Confidentiality.**

- a. **Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information,

except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

- b. **Permitted Disclosures.** Notwithstanding Section 21(a):
- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
 - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) is subject to disclosure by Host Customer pursuant to the California Public Records Act, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.
- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

22. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and

will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

- b. **Choice of Law; Dispute Resolution**. The law of the state of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in San Francisco, California. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted before arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices**. All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances**. Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers**. No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities**. Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity subject to the jurisdiction of the California Public Utilities Commission. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.
- h. **Service Contract**. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. **No Partnership**. No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.

- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.
- k. Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of **Exhibit 4**

EXHIBIT 5

SYSTEM SERVICES

Energy Services

Backup Power.

The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Seller has approved and connected to the System. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Seller causes the System to discharge, Seller shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Seller will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Seller will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that Seller cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“*Prudent Industry Practices*”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

Demand Charge Management

If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s demand charge management.

Time-Of-Use Management

If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s time-of-use management.

Solar Self-Consumption.

If the System is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

System Performance Monitoring.

Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government

requirements, including but not limited to, compliance with requirements of a utility program and any applicable incentive programs, and/or determine when repair services are necessary. Seller shall provide problem diagnosis, on-site repair and preventative maintenance for the BESS to ensure continued performance of the BESS throughout the Warranty Term.

Amended and Restated Energy Services Agreement

This Amended and Restated Energy Services Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”). This Agreement replaces in its entirety the Energy Services Agreement executed by the Parties on May 11, 2021 as amended on August 10, 2021 and represents the definitive agreement of the Parties.

Host Customer:		Seller:	
Name and Address	Nevada Irrigation District Business Center 1036 W Main Street Grass Valley, CA 95945 Attention: Doug Roderick Site Address 17620 Norlene Way Grass Valley, CA 95959	Name and Address	GSR-BTM LLC 1515 7 th Street #049 Santa Monica, CA 90401 Attention: Phillip Suna
Phone	530-273-6185	Phone	(888) 465-1784
Fax	None	Fax	None
E-mail		E-mail	phillip@swellenergy.com
Premises Ownership	Host Customer [X] owns [] leases the Premises. List Premises Owner, if different from: Host Customer: _____ n/a _____	Additional Seller Information	
Tax Status	Tax-exempt		
Project Name	Norlene Pump House		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Pricing
- Exhibit 2** System Description, Delivery Point, and Premises
- Exhibit 3** Host Customer Information
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Definition of Services

Host Customer: NEVADA IRRIGATION DISTRICT Seller: GSR-BTM LLC

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT 1

Pricing

1. **Initial Operating Term:** Ten (10) years, beginning on the Commercial Operation Date (the “**Initial Operating Term**”).
2. **Additional Operating Term:** Up to one (1) additional term of five (5) years at a price to be agreed by the Parties beginning on the expiration of the Initial Operating Term (the “**Additional Operating Term**”).
3. **Contract Price:** Self Generation Incentive Program (SGIP) Payments are assigned by Host Customer to Seller and paid by SGIP Program Administrator directly to Seller in accordance with the General Terms and Conditions of this Agreement. The table below delineates anticipated SGIP Payments to be paid directly to Seller by SGIP Program Administrator and payments paid by Host Customer to Seller. Host Customer shall have no obligation whatsoever to pay Seller amounts under the column titled “From SGIP Program Administrator to Seller.” Payments from Host Customer to Seller for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4**

Operating Term Contract Year	\$/year (from SGIP Program Administrator to Seller)	\$/year (from Host Customer)
1	\$219,825.00	\$0
2	\$43,965.00	\$0
3	\$43,965.00	\$0
4	\$43,965.00	\$0
5	\$43,965.00	\$0
6	\$43,965.00	\$0
7	\$0	\$0
8	\$0	\$0
9	\$0	\$0
10	\$0	\$0
Total	\$439,650.00	\$0

The first year of the Initial Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions, revisions to these assumptions may cause consideration of a ‘Contract Price Update’ described below:
 - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
 - b. All prices in this Agreement are calculated based on an Upfront Payment of \$219,825.00 and a Performance Based Payment of \$43,965.00 paid shortly after the end of each of the first five Contract Years of System operations. The Seller posted the SGIP 5% Deposit for this System in the amount of \$21,982.50. The SGIP Program Administrator will refund this deposit directly to Seller shortly after the Commercial Operation Date.
 - c. The System is sized and configured as defined by **Exhibit 2**.
 - d. Total Eligible Project Cost: SGIP program rules require that this Agreement state the Total Eligible Project Cost. The Total Eligible Project Cost for the BESS as defined by SGIP program rules is \$439,650.00
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Seller is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design caused or requested by Host Customer, which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.

6. Termination Payment Schedule. In the event of early Termination of the Agreement by Host Customer for reasons other than a Seller Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:

- a. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter¹, Host Customer must repay Seller the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Seller to advance development of the System.
- b. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and commencement of the Operating Term, but prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to the amount in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Seller’s actual reasonable cost incurred to remove the System from the Premises. For the avoidance of doubt, Host Customer shall be obligated to pay only the amount corresponding to the year of termination. The Termination Payment obligation shall not be cumulative. Regarding System removal upon early Termination, Seller will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

Operating Term Contract Year	Termination Payment (\$)
1	\$219,825.00
2	\$175,860.00
3	\$131,895.00
4	\$87,930.00
5	\$43,965.00
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

¹ Per the SGIP Handbook, Seller will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

EXHIBIT 2

System Description, Delivery Point, and Premises

- a. **System Location:** 17620 Norlene Way Grass Valley, CA 95959
- b. **System Size (AC kW):** 116kW
- c. **Expected First Year Energy Capacity (kWh):** 464 kWh
- d. **Expected Installation: Indoor [] Outdoor [X] Location** Near the south side of the existing building on site close to the electrical switchboard located in the dirt not on top of any major utilities. Placement will maintain adequate room for traffic flow and access to building. Bollards to be used to protect equipment.
- e. **Expected Battery Energy Storage System**

Manufacturer/Model	Quantity
Tesla Powerpack 4-hr	2

- f. **Facility and System Description:** See **Exhibit 2, Attachment A**
- g. **Description of Delivery Point:** Equipment to tie-in to main service switchboard after existing main disconnect. A relay is to be used on main disconnect to isolate the mains service switchboard from the grid if the existing disconnect can be controlled by a shunt trip and mechanical recloser. Other means might be necessary to isolate the system if the disconnect cannot be remotely controlled.
- h. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary:** The system is being designed to cover the existing peak demand loads and will backup the main distribution switchboard as it is currently loaded. No additional circuit relocation will be required.
- i. **Description of cost items not included in Contract Price, if any:** None

EXHIBIT 2, Attachment A:

Facility and System Description

Pump Station. Installation of two (2) Tesla Powerpack 4-hr with one (1) Tesla Power Converter cabinet housing two 70kVA Tesla Powerstages. The system is to be controlled by one (1) Tesla Site Controller that will monitor battery output and site demand using two (2) Accuvim IIR meters. Power converter to feed one (1) generation subpanel with circuits to power the controller and meters. The generation subpanel to feed a utility approved fused disconnect located within 10' of the existing meter; disconnect can be used to manually shutdown the battery system. The disconnect will feed the main service switchboard. One (1) SEL 700G relay controlled by the controller will be installed to remotely operate the existing 800A main disconnect for isolation purpose: main disconnect will continue to remain operational as a manual shutoff for the site. All equipment to be installed on concrete pad with seismic anchors to meet code. Equipment to be protected with bollards on all sides exposed to vehicle traffic.

EXHIBIT 3

Host Customer Information

Within 10 days following the execution of this Agreement, Host Customer will supply Seller with the following information:

Host Customer Information							
Name: Host Customer Nevada Irrigation District					Tax ID: (if applicable)		
Previous & Other Names (if applicable):				Website: www.nidwater.com			
Address: 1036 W Main Street							
City, State, Zip Grass Valley				CA		95945	
Phone Number: 530-273-6185							
Entity Type	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Check One:							X
Property Address for Battery Installation: Address above			State:		Zip Code:	Property Owned by Applicant X YES o NO	
Property Type Water treatment		If Not Applicant, Name of Property Owner, address, phone number and email.					
Information Requested: Please submit the information required below via electronic format to info@gsr-energy.com.							
<u>Corporate Records / Formation Documentation</u>							
<input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).							
<u>Financial Statements</u>							
<input type="checkbox"/> If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
<u>Real Estate Documents</u>							
<input type="checkbox"/> Demonstration of Ownership of Premises or Lease with Premises Fee Owner							
<input type="checkbox"/> Copies of Liens or Third-Party Security Interests in the Premises							
<p>If Host Customer is not Property Owner, Seller may request Host Customer to provide additional documentation to complete the evaluation process. Seller will notify Host Customer if additional information is required.</p>							

EXHIBIT 4

General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Seller, and Seller shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.

2. **Term and Termination.**
 - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date. The Initial Operating Term runs for a period of 10 years, unless earlier terminated or extended as provided in this Agreement (collectively, the “**Contract Term**”).

 - b. **Additional Operating Term.** The Parties may agree in writing to extend this Agreement for one (1) additional 5-year Additional Operating Term at a price to be agreed between the Parties.

 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or financially viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Seller to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.

 - d. **Termination by Host Customer for Delay.** Seller will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Seller fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.

 - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Seller has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Seller has received confirmation of a successful SGIP reservation in an amount not less than 100% of the price for materials and labor for installation of the battery storage system. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the System, Seller will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Seller within seven (7) days of receipt. Each Party has the right to terminate this Agreement, without penalty or fee, if Seller determines after the engineering site audit of the Premises that Seller has misestimated the System’s total cost. Such termination right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Seller informs Host Customer in writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Seller. Host Customer authorizes Seller to

make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. Billing and Payment; Taxes.

- a. **Charges.** In accordance with Section 11.a, Host Customer and Seller agree that SGIP Program shall pay Seller as set forth in Section 3 of **Exhibit 1** (the “**Contract Price**”), unless subject to a Contract Price Update specified in Exhibit 1, Section 4.
- b. **Invoices.** Seller shall invoice Host Customer only if and when some amount is due under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Seller is responsible for any incremental personal property taxes imposed on the Host dueto installation of the System (“**Seller’s Taxes**”). Seller shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

- 4. Incentives and Environmental Attributes.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Seller in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Host Customer shall not make any filing or statements inconsistent with Seller’s ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Seller. For sake of clarity, Seller will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Seller, Host Customer will immediately pay or deliver such refunded amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits(including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. Project Completion.

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “**Approval**”):

- i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.
- ii. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

Host Customer shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility. Seller shall not encumber the property or facilities of Host Customer with any agreements or other requirements which would survive the expiration or termination of this Agreement without the first obtaining the express written consent of Host Customer to enter such agreements.

- c. **System Design Approval.** Seller shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have thirty (30) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such thirty (30) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Seller shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer's approval. If the Host Customer and Seller cannot reasonably agree on an economically viable System design modification, Seller may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation as per **Exhibit 4**, Section 2(a) "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure.**
 - i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure.** If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued before termination including Seller's responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Host Customer and Host Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, before expiration of the initial one hundred eighty (180) day period, Seller provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
 - iii. "**Force Majeure Event**" means any event or circumstance beyond the reasonable control of and without the fault or negligence of the affected Party, including, without limitation, failure

or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event.

iv. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.

f. **Commercial Operation.** Seller shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the "**Commercial Operation Date**"). "**Commercial Operation**" means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer's reasonable request.

6. **Installation, Operation and Maintenance.**

a. **System Ownership.** Seller will own System and will use System solely as described in this agreement to provide the System Services as described in **Exhibit 5**. The BESS shall comply with all applicable rules, regulation, and local building codes. The Seller, as owner of the BESS, shall ensure that the manufacturer warranty covers the entire BESS for a minimum of ten (10) years.

b. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, own, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state of California. The System shall comply with all applicable rules, regulation, and local building codes.

c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Host Customer shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.

d. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the System's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.

e. **Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to

the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Host Customer shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the System, Host Customer may request relocation of the System under Section 8 hereof. If a temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Host Customer's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

- f. **Malfunctions and Emergencies**: Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the System or its operation. In the event of any System emergency condition, or any damage or loss of the use of the Premises or the System, or event or condition that could reasonably be expected to result in physical damages to the Premises, Seller, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- g. **Disconnection**. Host Customer shall not cause or allow a disconnection of the System from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Seller or in response to an emergency situation per Section 6(d).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights**. Host Customer hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller to perform this Agreement. During the Contract Term, Host Customer shall provide Seller, its employees, contractors and subcontractors with reasonable access to the Premises at mutually agreed upon times to allow Seller to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. All such rights of access shall be coordinated with Host Customer. At Host Customer's request, Seller's access shall be limited to times when a Host Customer agent or employee is present. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the License Term, Host Customer shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance**. Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises**. Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.

- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
- i. **Lien Obligations.** Host Customer shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a “Lien”) on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Host Customer of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property. If a Party fails to cause a Lien that such Party directly or indirectly caused, created, assumed or allowed to exist to be discharged and released of record within the thirty (30) day period required by this Section 7.e.i, the other Party may (but is not required) to cause such discharge and release of record, and the Party responsible for such Lien shall reimburse the costs incurred by the other Party to obtain such discharge and release of record (including, without limitation, reasonable attorneys’ fees) within ten (10) business days after the other Party’s delivery of an invoice and documentation reasonably supporting the invoiced amount.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party’s property as a result of the indemnifying Party’s breach of its obligations under Section 7(e)(i).

8. Relocation of System.

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the System, at Host Customer’s cost, in lieu of termination of the Agreement by Seller for a Default Event by Host Customer. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer’s proposal, Seller may terminate this Agreement pursuant to Section 14(b)(ii).

9. Removal of System upon Termination or Expiration.

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented

warehouse with Seller paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. System Data.

- a. **Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Seller certain data, information, and content (collectively "Equipment Data") through the operation of the System. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Seller may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Seller acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Seller or an agent or affiliate of Seller shall not disclose any knowledge, data or information related to the System and/or Seller's use and ownership of the System. Any such disclosure of data collected from Host Customer shall comply with all applicable requirements of law, including those imposed by the Federal Energy Regulatory Commission, North American Electric Reliability Corporation (NERC) and other federal, state, and local regulations.
- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement), Seller may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Seller with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Such information shall not be shared with third parties, except as expressly approved by Host Customer, and in accordance with all applicable laws, rules, and regulations. Host Customer agrees to allow Seller and Seller affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements. Host Customer agrees to participate in and complete all surveys received from Seller and its Grid Service Entities.

11. SGIP Requirements.

- a. **Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Seller to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Host Customer an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Seller. The financial incentives issued by Host Customer's SGIP Program Administrator after the System achieves permission to operate from the Utility is called "**SGIP Payments**". Host Customer agrees to assign all title and interest in SGIP Payments to Seller, identifying Seller as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.
- b. **SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2** ("**Upfront Payment**"). The second component is the Performance Based Payment, the balance of the SGIP Payments paid out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Seller will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available

SGIP Payments. A “**Full Cycle**” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the System functions to meet this SGIP requirement.

- c. **Administration**. Seller will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Seller shall keep Host Customer reasonably informed of actions, communications, and events concerning SGIP matters, and shall provide Host Customer the opportunity to review and comment upon material filings and communications. Host Customer hereby authorizes Seller, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. **Further Assurances**. Seller shall execute such documents relating to such incentives as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Seller.
- e. **Appointment as SGIP Services Provider**. Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for SGIP (“**SGIP Services Provider**”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Seller all rights to use the System to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the System by Seller (or Seller’s affiliates) may override other System operating modes while preserving key capabilities to provide back-up power and cycling requirements for SGIP. Seller will make any relevant notices and documents available to Host Customer.
- f. **SGIP Default**. Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Seller may take any reasonable action to correct its default or to prevent Seller’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Seller for any loss of SGIP benefits Seller suffers and for any return of SGIP refunds Seller must make to program administrators.

12. **Grid Services**

- a. **Purpose**. In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“**Grid Services**”, in each case provided under a “**Grid Program**”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Seller to enroll the System to participate in any Grid Program which may from time to time become available provided that Seller shall operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. In some cases, incentives or payments may be available for participation in a Grid Program (“**Grid Payments**”). Seller will notify Host Customer if Seller will enroll the System in any Grid Program, including what, if any, Grid Payments will be paid to Host Customer, and Host Customer will have thirty (30) days to opt the System out of participating in the Grid Program. If Host Customer does not timely opt out of participating in the Grid Program, the System will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.

- b. **Appointment as Grid Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs (“**Grid Services Provider**”). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances.** Seller shall execute such documents relating to enrollment and participation in Grid Programs as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Seller.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings.** Seller will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer’s utility electricity bill for load served by the System. All savings to Host Customer’s electric bills will accrue to the Host Customer. During the entire term, Host Customer will have access to Tesla Powerhub user interface for observance of battery system performance. Based on Seller’s analysis of Host Customer’s historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Seller estimates Host Customer’s electric bills will be reduced by approximately \$5,775per year. The Host Customer bills at the site are expected to be reduced by a similar amount each year of the Contract Term.
- b. **Reserved.**
- c. **Tariff Change.** Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Seller of the proposed change so that Seller can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Seller can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a “**Defaulting Party**”, the other Party is the “**Non- Defaulting Party**” and each of the following is a “**Default Event**”:
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“**Payment Default**”);
 - ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
 - iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
 - iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken

in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,

- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Seller's rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Host Customer to Seller.
 - (2) **Termination by Host Customer.** If Seller is the Defaulting Party and Host Customer terminates this Agreement, the Termination Payment to Host Customer will be equal to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Seller.

- i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.
- iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

15. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
 - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Seller the following:
 - i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
 - ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
 - iii. **Accuracy of Information.** All information provided by Host Customer to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.

- iv. **Host Customer Status.** Host Customer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.
- c. **Seller's Warranties.**
 - i. If Seller damages any other part of the Premises or any Improvement, Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.
 - ii. Seller warrants that the BESS Services as described in **Exhibit 5** will be performed in accordance with this Agreement and shall be free from material defects in workmanship and materials (the "Services Warranty") during the Initial Term (the "Warranty Period").
- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Contract Term, the Parties shall maintain the following insurance, as applicable:
 - Seller's Insurance.** As of the Effective Date, Seller shall maintain One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage and naming Host Customer as an additional insured; (b) employer's liability insurance with minimum coverage of at least One Million Dollars (\$1,000,000); (c) automobile liability insurance on all owned, non-owned and/or hired vehicles used by Seller on Host Customer's Premises and/or directly in connection with the provision of Services in the Agreement with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Before system equipment is delivered to Host Customer site, Seller shall maintain property insurance of the System for the replacement cost thereof.
 - i. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Contract Term, Seller shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Seller has the right to file such disclaimer.
- iv. **SNDA.** Upon request, Host Customer shall deliver to Seller a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice.** If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

b. **Option to Purchase.**

- i. **Exercise of Option.** Beginning at the end of the sixth (6th) Operating Term Contract Year and at the end of any subsequent Operating Term Contract Year, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment on that date as set forth in Section 6 of **Exhibit 1**. Host Customer shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days before the end of the relevant Operating Term Contract Year and the purchase shall be completed before the end of the Operating Term Contract Year.
- ii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Host Customer has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the energy storage industry to determine the Fair Market

Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Host Customer does not conclude the purchase, cost of the appraisal will be born solely by the Host Customer.

- iii. Title Transfer; Warranties; Manuals. Seller shall transfer good title to the System to Host Customer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Host Customer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Host Customer all System operation and maintenance manuals and logs in Seller's possession and provide Host Customer basic training on the operation and maintenance of the System upon Host Customer's reasonable request. Upon purchase of the System, Host Customer shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 11(d), Seller will have no further liabilities or obligations hereunder for the System.

18. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "**Indemnified Parties**"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
 - i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Host Customer's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section

18(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

- ii. **Host Customer Indemnity.** Host Customer shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. Limitations on Liability.

- i. **No Consequential Damages.** Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).
- ii. **Actual Damages.** Except for indemnification of Claims pursuant to this Section 18, and coverages provided by the insurance requirements of this Agreement, except as otherwise limited in Section 19, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Host Customer and/or the SGIP Administrator under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

e. EXCLUSIVE REMEDIES. TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

f. Comparative Negligence. Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

19. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Host Customer in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this

Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.

- b. **Illegality or Impossibility.** If, in Seller's sole discretion, a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

20. **Assignment and Financing.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain energy storage systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 20(a)(i):
 - 1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
 - 2. Host Customer may, and provide prior notice to Seller, assign this Agreement to an affiliate of Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

Host Customer must assign, and provide prior notice to Seller, this Agreement to an affiliate of Host Customer of the Premises. Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this

Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

- c. **Termination Requires Consent**. Seller and Host Customer agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. **Confidentiality**.

- a. **Confidential Information**. To the maximum extent permitted by applicable law, if either Party provides confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

- b. **Permitted Disclosures**. Notwithstanding Section 21(a):

- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, “**Representatives**”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) is subject to disclosure by Host Customer pursuant to the California Public Records Act, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law.

- c. **Miscellaneous**. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity**. Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements

regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

22. General Provisions

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state of California governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in San Francisco, California. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted before arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity subject to the jurisdiction of the California Public Utilities Commission. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.

- h. Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.
- k. Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of **Exhibit 4**

EXHIBIT 5

SYSTEM SERVICES

Energy Services

Backup Power.

The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Seller has approved and connected to the System. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Seller causes the System to discharge, Seller shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Seller will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Seller will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that Seller cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“*Prudent Industry Practices*”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

Demand Charge Management

If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s demand charge management.

Time-Of-Use Management.

If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s time-of-use management.

Solar Self-Consumption.

If the System is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

System Performance Monitoring.

Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government requirements, including but not limited to, compliance with requirements of a utility program and any applicable

incentive programs, and/or determine when repair services are necessary. Seller shall provide problem diagnosis, on-site repair and preventative maintenance for the BESS to ensure continued performance of the BESS throughout the Warranty Term.

This CONSENT AND AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Consent”), dated as of [___], 2022, is executed by and among **NEVADA IRRIGATION DISTRICT**, a [California public agency]¹, (together with its successors, designees and assigns, “Contracting Party”), **C&IERI, LLC**, a Delaware limited liability company (together with its successors, designees and assigns, “Collateral Assignor”), and **CIT BANK, A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY** (“CIT Bank”) in its capacity as the collateral agent (together with its successors, designees and assigns in such capacity, “Collateral Agent”) for the Secured Parties (as defined below). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms, directly or by reference, in the Assigned Agreements.

RECITALS

A. Collateral Assignor has entered into that certain Financing Agreement, dated as of [____], 2022, (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), with the financial institutions from time to time party thereto as lenders (the “Lenders”), the Collateral Agent, CIT Bank, in its capacity as Administrative Agent thereunder, the LC Issuing Banks thereunder, and any other agents and persons party thereto (Lenders and all such other parties to the Financing Agreement (except for Collateral Assignor), collectively, the “Secured Parties”). Pursuant to the Financing Agreement, the Lenders and other Secured Parties, as applicable, intend to extend credit for the construction, installation and operation of the System.

B. GSR-BTM LLC, a California limited liability company, has entered into (i) that certain Energy Services Agreement with Contracting Party dated as of May 11, 2021 (the “NIDW 1011 ESA”), (ii) that certain Energy Services Agreement with Contracting Party dated as of May 11, 2021 (the “NIDW 1009 ESA”), [(iii) that certain Energy Services Agreement with Contracting Party dated as of [____], 20[___] (the “NIDW 1005 ESA”), and (iv) that certain Energy Services Agreement with Contracting Party dated as of May 11, 2021, (the “NIDW 1007 ESA”),] in each case as assigned to Collateral Assignor pursuant to that certain [Assignment Agreement], dated as of [____], 2022² (in each case as amended in accordance with the terms hereof or as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, an “Assigned Agreement” and collectively, the “Assigned Agreements”).

C. Collateral Assignor has entered into that certain Security Agreement, dated as of [____], 2022, with Collateral Agent (as amended, amended and restated, supplemented or otherwise modified and in effect from time to time, the “Security Agreement”), pursuant to which Collateral Assignor has collaterally assigned and granted to Collateral Agent a first-priority security interest in all of Collateral Assignor’s right, title and interest in, to and under the Assigned Agreements (the “Assigned Collateral Interest”), as collateral security for satisfaction of all “Obligations” (as defined in the Financing Agreement) of Collateral Assignor under the Financing Agreement and the other related financing documents (the “Financing Documents”).

D. It is a requirement under the Financing Agreement that Contracting Party and the other parties hereto shall have executed this Consent.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything to the contrary in the Assigned Agreements, as follows:

¹ Note: To be confirmed by Contracting Party.

² Note: Borrower to provide the assignment agreement.

1. Consent and Agreement. Contracting Party:

(a) acknowledges and consents in all respects to the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, pursuant to the Security Agreement and the terms hereof;

(b) acknowledges the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Agreement and the other Financing Documents, upon delivery of a written notice to Contracting Party (with a copy thereof delivered to Collateral Assignor) that an “Event of Default” has occurred and is continuing under the Financing Agreement (a “Financing Event of Default”), to cure any defaults of Collateral Assignor under any Assigned Agreement, make all demands, give all notices, take all actions, and exercise all rights of Collateral Assignor under any Assigned Agreement and agrees to accept any such exercise.

2. Subsequent Transferee.

(a) Contracting Party agrees that, if Collateral Agent notifies Contracting Party in writing (with a copy thereof delivered to Collateral Assignor) that a Financing Event of Default has occurred and is continuing and that Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement and the Security Agreement with respect to the foreclosure (whether judicial or non-judicial) or sale of the Assigned Collateral Interest (or any portion thereof), then (x) Collateral Agent or any other purchaser, successor, assignee or designee of the Assigned Collateral Interest that has provided to Contracting Party reasonably detailed evidence that such entity has the financial capability and experience necessary to operate and maintain storage systems similar to the System (which such evidence shall be satisfied if such purchaser, successor, assignee or designee has the same or better creditworthiness as the Collateral Assignor has as of the date hereof and if the operator of the System at the time of the such assignment remains in place) (as the case may be, in each case, a “Subsequent Transferee”) following the exercise by Collateral Agent of such rights and remedies shall be substituted for Collateral Assignor under the applicable Assigned Agreement and (y) Contracting Party shall (i) recognize the Subsequent Transferee as its counterparty under such Assigned Agreement and (ii) continue to perform its obligations under such Assigned Agreement in favor of the Subsequent Transferee in accordance with such Assigned Agreement; provided, however, that, as a condition of such substitution, such Subsequent Transferee (A) shall assume in writing all of Collateral Assignor’s rights and obligations under such Assigned Agreement and (B) shall have cured all then-existing Defaults (as defined in Section 3 below) of Collateral Assignor except for any Non-Curable Defaults (as defined in Section 3 below).

3. Right to Cure. In the event of a default or breach by Collateral Assignor in the performance of any of its obligations under any Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under such Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend performance under such Assigned Agreement (hereinafter, a “Default”), Contracting Party shall not cancel, suspend or terminate such Assigned Agreement or its performance thereunder until it first gives written notice of such Default to Collateral Agent and affords Collateral Agent or its successor(s), assignee(s), or designee(s) (a) a period of thirty (30) days from the later to occur of (i) the Collateral Agent’s receipt of such notice and (ii) the date Collateral Assignor’s applicable cure period provided in such Assigned Agreement expires, to cure such Default if such Default is the failure to pay amounts to Contracting Party which are due and payable under such Assigned Agreement or (b) with respect to any other Default, a period of up to ninety (90) days from the later to occur of (i) Collateral Agent’s receipt of such notice, and (ii) the date Collateral Assignor’s applicable cure period provided in such Assigned Agreement with respect to such Default expires, to cure such non-payment Default as long as (x) Collateral Agent has provided Contracting Party with a notice of its intent to cure such non-payment Default within forty-five (45) days after Collateral Agent’s receipt of Contracting Party’s notice of Default and (y) Collateral Agent is diligently pursuing such cure. Contracting Party agrees that notwithstanding its right to terminate such Assigned Agreement as a result of any Default that is peculiar to Collateral Assignor and not curable by Collateral Agent (a “Non-Curable Default”), such as the insolvency, bankruptcy, general assignment for the benefit of creditors, or appointment of a receiver, trustee, custodian or liquidator of Collateral Assignor or its properties, Contracting Party will not terminate such Assigned Agreement as a result of such Non-Curable Default until it has given, Collateral Agent or its successor(s), assignee(s) or designee(s), a reasonable period, but no more than one hundred twenty (120) days from receipt of such notice, to declare a

Financing Event of Default and commence and complete foreclosure proceedings or any other proceedings necessary to take possession of the System as and to the extent permitted under and in accordance with the Financing Documents, provided that all other then-existing Defaults of Collateral Assignor shall have been cured by Collateral Agent or its successor(s), assignee(s) or designee(s), as applicable.

4. Replacement Agreement. In the event that any Assigned Agreement is rejected or terminated as a result of any bankruptcy or insolvency or similar proceeding, Contracting Party shall, at the option of Collateral Agent exercised within sixty (60) days after such rejection or termination, enter into a new agreement with Collateral Agent having identical terms as such Assigned Agreement (subject to (i) any conforming changes necessitated by the substitution of parties, and (ii) other changes as the parties may mutually and reasonably agree, the “Replacement Agreement”); provided, however, that, as a condition to execution of such Replacement Agreement, Collateral Agent shall have cured all then-existing Defaults of Collateral Assignor except for any Non-Curable Defaults.

5. No Liability. Contracting Party acknowledges and agrees that neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) or other representative of Collateral Agent or the Secured Parties) shall have any liability or obligation under any Assigned Agreement as a result of exercising its rights under this Consent (other than as a Subsequent Transferee under Section 2 of this Consent), the Financing Agreement or any other Financing Document, and neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) or other representative of Collateral Agent or the Secured Parties) shall be obligated or required to perform any of Collateral Assignor’s obligations under any Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Financing Agreement or any other Financing Document, except during any period in which such Person has elected to become a Subsequent Transferee pursuant to Section 2 of this Consent or a counterparty to a Replacement Agreement pursuant to Section 4 of this Consent.

6. Payment of Monies. Commencing on the date of this Consent and until the date when Collateral Agent and Collateral Assignor provide a written notice to Contracting Party that all “Obligations” (as defined in the Financing Agreement) under the Financing Agreement have been paid to the Secured Parties in full and no commitments of the Secured Parties to make advances under the Financing Agreement remain outstanding, Contracting Party agrees to make all payments (if any) required to be made by it under each Assigned Agreement in Dollars and in immediately available funds directly to the following account:

Bank: CIT Bank, a division of First-Citizens Bank & Trust Company
ABA: [_____]
A/C#: [_____]
Account Name: [_____]

or, if Contracting Party has been notified in writing by Collateral Agent (with a copy to Collateral Assignor) that a Financing Event of Default has occurred and is continuing, to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to Contracting Party.

7. Representations and Warranties. Contracting Party hereby represents and warrants to Collateral Assignor, Collateral Agent and the Secured Parties, as of the date of this Consent that:

(a) Contracting Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) is duly qualified, authorized to do business and in good standing under the laws of the jurisdiction of its formation and in every other jurisdiction necessary to perform its obligations under each Assigned Agreement and this Consent, and (iii) has all requisite power and authority to conduct its business as now conducted, to own its properties and assets, and to execute, deliver and perform its obligations under each Assigned Agreement and this Consent, and to carry out the terms thereof and hereof and the transactions contemplated thereby and hereby;

(b) The execution, delivery and performance by Contracting Party of each Assigned Agreement and this Consent, and the consummation of the transactions contemplated thereby and hereby, have been duly authorized by all necessary [public agency] action on the part of Contracting Party and do not and will not require any further authorizations, consents or approvals or filings with any Person which have not been obtained or made, or violate or conflict with any provision of any law, regulation, order, permit, license, rule, judgment, injunction, or similar matters or

breach any material agreement, indenture, contract or organizational document presently in effect with respect to or binding on Contracting Party or any properties to which Contracting Party may be bound;

(c) Neither Contracting Party nor, to the best of Contracting Party's knowledge, any other party to any Assigned Agreement is in default under such Assigned Agreement;

(d) Each of this Consent and each Assigned Agreement is in full force and effect;

(e) There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the knowledge of Contracting Party, threatened against or affecting Contracting Party that (i) questions the validity, binding effect or enforceability hereof or of any Assigned Agreement, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) would reasonably be expected to have a materially adverse effect on the performance of the obligations hereof or of any Assigned Agreement or the condition (financial or otherwise), business, or operation of Contracting Party, or (iii) could reasonably be expected to modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made with respect to the Assigned Agreements and the System;

(f) (i) No Force Majeure Event exists under, and as defined in, any Assigned Agreement, (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Contracting Party or Collateral Assignor to terminate or suspend its obligations under any Assigned Agreement, (iii) there are no disputes or legal proceedings between Contracting Party and Collateral Assignor, and (iv) Collateral Assignor does not owe any indemnity payments or other amounts to Contracting Party under any Assigned Agreement, and no amounts are currently due and payable to Contracting Party under such Assigned Agreement which have not been paid;

8. **Notices.** Any communications hereunder between or among the parties hereto, or any notices provided herein to be given, may be given to the following addresses:

If to Contracting Party: [Nevada Irrigation District Business Center
1036 W Main Street
Grass Valley, CA 95945
Attn: Doug Roderick
Tel: (530) 273-6185
Email: [____]]³

If to Collateral Agent:
CIT Bank, a division of First-Citizens Bank & Trust Company
as the Collateral Agent
2450 Broadway Ave., Suite 400
Santa Monica, CA 90404
Attn: Drew Venkatraman
Tel: (310) 449-2298
Email: PEIPortfolioMG@cit.com
Email: drew.venkatraman@cit.com

³ Note: To be confirmed by Contracting Party.

If to Collateral Assignor: C&I ER1, LLC
Swell Energy Inc.
1515 7th Street, Suite #049
Santa Monica, CA 90401
Attn: General Counsel
Tel: (310) 340-0493
Email: legal@swellenergy.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first-class mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by facsimile. Any notice or other communication so given shall be effective upon receipt by the addressee, except that any notice or other communication so transmitted by facsimile shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted before 5:00 p.m., recipient's time, and if transmitted after that time, on the next following business day; provided, however, that if any notice or other communication is tendered to an addressee and the delivery thereof is refused by such addressee, such notice or other communication shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder by giving written notice of such change to the other parties in the manner set forth in this Section 8.

9. Binding Effect: Amendments. This Consent shall be binding upon and shall inure to the benefit of Contracting Party, Collateral Assignor, Collateral Agent and the Secured Parties and their respective successors, designees and permitted assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, Collateral Agent and Collateral Assignor.

10. Governing Law. THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICT OF LAWS).

CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA IN SACRAMENTO, CALIFORNIA, AND OF ANY CALIFORNIA STATE COURT SITTING IN SACRAMENTO, CALIFORNIA, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. CONTRACTING PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL TO CONTRACTING PARTY AT ITS NOTICE ADDRESS PROVIDED PURSUANT TO SECTION 8 HEREOF. EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, LEGAL PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11. Severability. If any provision of this Consent is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Consent shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable

provision. The invalidity of a provision of this Consent in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12. Counterparts. This Consent may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Consent by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Consent.

13. Headings. The headings of the sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

IN WITNESS WHEREOF, the undersigned, by their respective officers, representatives or other authorized persons thereunto duly authorized, have duly executed this Consent and Agreement as of the date first written above.

NEVADA IRRIGATION DISTRICT,
a [California public agency],
as Contracting Party

By: _____
Name:
Title:

C&I ER1, LLC,
a Delaware limited liability company,

as Collateral Assignor

By: _____
Name:
Title:

Accepted and Agreed:

FIRST-CITIZENS BANK & TRUST COMPANY,
as Collateral Agent

By: _____
Name:
Title: