



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 last date signed below (the “**Effective Date**”).

Host Customer:		Seller:	
Name and Address	County of Ventura 800 S. Victoria, CA 93009 L#3015 Ventura, CA 93009 Mike Duncan GSA Energy Manager	Name and Address	Swell Services, Inc 1515 7th St, #049 Santa Monica, CA 90401 Attention: Head of Commercial Solutions
Phone	(805) 658-4372	Phone	(888) 465-1784
Fax	Enter contact Fax # or none	Fax	(310) 961-5399
E-mail	Mike.duncan@ventura.org	E-mail	legal@swellenergy.com
Premises Ownership	Host Customer [x] owns [] leases the Premises. List Premises Owner, if different from Host Customer: enter name and address of landlord or n/a if Host Customer owned Premises	Additional Seller Information	Contractor's License Number: 1021183
Tax Status	501c3		
Project Name	Station 42 295 E. High St Moorpark, CA 93021		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the Battery Energy Storage System (BESS) described in **Exhibit 2** (the “**BESS**”) 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 BESS (the “**Improvements**”).

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

<u>Exhibit 1</u>	Pricing
<u>Exhibit 2</u>	BESS Description, Delivery Point and Premises
<u>Exhibit 3</u>	Host Customer Information
<u>Exhibit 4</u>	General Terms and Conditions
<u>Exhibit 5</u>	Definition of Services

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

HOST CUSTOMER:

DocuSigned by:
Mike Duncan
ABE5748B206849D...
Signature

Mike Duncan
Print Name

GSA Energy Manager
Title

3/6/2023
Date

SELLER:

DocuSigned by:
Shawn Jacobson
65F29C634E594C3...
Signature

Shawn Jacobson
Print Name

VP, Operations
Title

3/6/2023
Date

Exhibit 1
Pricing

1. **Initial Term:** Ten (10) years, beginning on the Commercial Operation Date (the “Initial Term”).
2. **Additional Terms:** Up to one (1) term of five (5) years beginning on the expiration of the Initial Term (the “Additional Term”) upon mutual agreement of the Parties. Additional charges may apply for services provided during any Additional Term.
3. **Contract Price:** All California Self Generation Incentive Program (“SGIP”) revenues applicable to the BESS are assigned by Host Customer to Seller and paid directly to Seller in accordance with Sections 4 and 19 of **Exhibit 4**. The table below delineates SGIP Revenues paid directly to Seller and any additional payments to be made by Host Customer to Seller.

Contract Year	\$/year (from SGIP)	\$/ (Year from Host Customer)
1	\$124,017.08	\$0.00
2	\$24,803.41	\$0.00
3	\$24,803.41	\$0.00
4	\$24,803.41	\$0.00
5	\$24,803.41	\$0.00
6	\$24,803.41	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
Total:	\$248,034.15	\$0.00

The first Contract Year shall commence on the Commercial Operation Date (as defined in Section 5(f) of **Exhibit 4**), and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date. For clarity, the SGIP payments indicated in the table for contract years two (2) through six (6) are the estimated Performance Based Incentive (“PBI”) payments for BESS performance achieved in the preceding Contract Year. The “Contract Price” of this Agreement is defined as the sum of the total SGIP revenues plus the total Host Customer payments as defined in the preceding table.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. The Total Eligible Project Cost for the BESS as defined by SGIP program rules is \$264,000.00
 - b. Interconnection costs for the BESS will not exceed \$10,000.00 in the aggregate.
 - c. All prices in this Agreement are calculated based on an upfront SGIP Incentive of \$124,017.08 and a maximum SGIP Performance Based Incentive of \$124,017.08
 - d. The BESS is sized and configured as defined by **Exhibit 2**.

- e. The Contract Price is inclusive of Seller's Taxes (as defined in Section 3(d) of Exhibit 4) at the rates in effect as of the Effective Date (to the extent that such rates are known or knowable by Seller on the Effective Date).
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 4, 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 BESS design 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 this Agreement by Host Customer prior to the completion of the Initial Term and for reasons other than a Seller Default per 11(b)(ii) of Exhibit 4, Host Customer shall pay a Termination Payment equal to those amounts listed in the Termination Payment Schedule below, plus Seller's actual cost incurred to remove the BESS from the Premises. Seller will provide open book accounting of any third-party costs incurred for BESS removal upon early Termination and shall not apply any margin or markup to such third-party costs.

Contract Year	Early Termination Payment (\$)
1	\$124,017.00
2	\$99,213.66
3	\$74,410.25
4	\$49,606.83
5	\$24,803.42
6	\$0.00
7	\$0.00
8	\$0.00
9	\$0.00
10	\$0.00

Exhibit 2
BESS Description, Delivery Point and Premises

1. **BESS Installation Address:** 295 E. High St, Moorpark CA 93021
2. **BESS Size (AC kW):** 60
3. **Expected First Year Energy Capacity (kWh):** 264
4. **Expected Installation:** Indoor [] Outdoor [X]
Location: Outdoor location cable of housing two containers and located close to the existing utility meter. The units will be positioned in the smallest footprint possible.
5. **Expected BESS Model**

Manufacturer/Model	Quantity
Energport L30132	2

6. **Facility and BESS Description:** See Exhibit 2, Schedule A
7. **Description of Delivery Point:** The Energport Offgrid package, which includes an ATS, will be installed between the existing main disconnect and the existing load center. The Energport Offgrid package will serve as the delivery point of the batteries.
8. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary.**
When there is no power at the site from the grid, the controller will instruct the batteries to move into islanding mode while controlling the Energport Offgrid package (automatic transfer switch) to open the disconnect breaking the site's connection to the grid. The batteries will entirely feed the building until fully discharged. The client is encouraged to conserve energy during a power outage to maximize backup duration. The peak power capacity is 60kW for steady power.
9. **Description of cost items to be installed that are not included in Contract Price, if any:**
Enter description of identified cost items not included in contract price or "none"
None

SCHEDULE A to EXHIBIT 2**FACILITY AND BESS DESCRIPTION****Site Description**

Fire Station 42, or the Moorpark Station, located at 295 E. High Street, in Moorpark, California is an active Ventura County Fire Station operated by the Ventura County Fire Department. The building was constructed in 2004 with approximately 10,000 square feet of covered space. The station acts as a backup communications center for the fire department and is treated as a critical electrical load. The station is manned 24 hours per day, seven days per week.

BESS Description

The battery energy storage system (BESS) is composed of two (2) Energport battery rack systems (132kWh each) with two (2) Sinexel 30kVA inverters. The BESS will be located in a exterior storage container. The system will also include two monitoring devices for measuring the site load requested and battery output. Install one transformer between the BESS and the Energport Offgrid package to converter the system from 480V to 208V. Install an Energport Offgrid package to ensure continuous power supply during the loss of grid power; the package includes an ATS to isolate the site from the grid.

Exhibit 3
Host Customer Information

Promptly following the execution of this Agreement, Host Customer shall supply Seller with the following credit information:

HOST CUSTOMER INFORMATION							
Name: Name, [Inc.]						Tax ID:	
Previous & Other Names:				Website:			
Corporate Address:							
City, State, Zip							
Phone Number: () -				Fax Number: () -			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other
Property Address for Battery Installation:			State:		Zip Code:	Property Owned by Applicant YES NO	
Property Type						Name of Property Owner if Not Applicant	
Information Requested: Please submit the information required below via electronic format to agordon@swellenergy.com							

Corporate Records

Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable).

Financial Statements

If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).

Real Estate Documents

Demonstration of Ownership of Premises or Lease with Premises Fee Owner

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 Services (as defined in **Exhibit 5**) during the Term (as defined in Section 2(a)). Electricity stored by the BESS shall be delivered to Host Customer at the Delivery Point.
2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The service period under this Agreement commences on the Commercial Operation Date (as defined in Section 5) and continues for the duration of the Initial Term and any Additional Term (as defined in Sections 1 and 2 of **Exhibit 1**), unless earlier terminated as provided for in this Agreement (collectively, the “Term”).
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for additional Term(s) as defined in Section 2 of **Exhibit 1** at a Contract Price to be agreed.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and before Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 5 of **Exhibit 1** or which invalidate the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the BESS will not be technically or economically 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, 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.** If Seller has not used 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 issued by the SGIP Program Administrator for the BESS, and as may be extended by the SGIP Program Administrator, 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 California SGIP rebate and incentive calculations Seller provides to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the BESS. However, actual rebates and incentives are variable as eligibility requirements, funding availability, and rates may change. Seller will use good faith reasonable efforts to help Host Customer secure applicable rebates and incentives as described further in Section 19. No substantial commencement of the work shall begin until Seller has received

confirmation of a successful SGIP reservation in an amount that preserves the financial viability of this Agreement under the terms provided herein. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once this signed SGIP Incentive Claim Form is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the BESS, Seller may commence work. 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 BESS's total cost or the estimated rebate is confirmed at a lower amount than proposed. Such termination right will expire at the earlier of (i) one (1) week before the scheduled BESS installation date and (ii) one (1) month after Seller informs Host Customer in writing of the revised cost. Any changes to the BESS 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.** Host Customer and Seller expect that the SGIP Program shall pay Host Customer as set forth in Section 3 of **Exhibit 1** and Host Customer shall pay Seller any additional amounts as set forth in Section 3 of **Exhibit 1** (together the "Contract Price"). Additional costs for items differing from the assumptions in **Exhibit 1**, Section 4 are Host Customer's responsibility.
- b. **Invoices.** Seller shall invoice Host Customer annually, unless no payment is due under the terms of this Agreement. Such annual invoices shall state the rates applicable to, and charges incurred by, Host Customer under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. All payments shall be made in U.S. dollars.
- d. **Taxes.**
 - i. **Host Customer's Taxes.** Host Customer is responsible for: (1) payment of, or reimbursement of Seller, for all taxes assessed on the sale, delivery or consumption of electricity stored by the BESS or the interconnection of the BESS to the utility's electricity distribution system; and (2) real property taxes.
 - ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the BESS ("**Seller's Taxes**").

4. **Incentives and Environmental Attributes.** As the owner of the BESS, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the BESS. Host Customer shall cooperate with Seller in obtaining, securing and transferring any and all Incentives. 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 BESS 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 BESS, (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, revenue stream or payment in connection with the BESS (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the BESS, provided that Incentives shall not include Environmental Attributes.

"Environmental Attributes" means, with respect to the BESS, 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 BESS and its displacement of conventional energy generation.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the BESS, subject to Section 2(c), Section 11, 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 zoning, land use and building permits required for Seller to construct, install and operate the BESS; and
 - ii. any agreements and approvals from the utility necessary in order to interconnect the BESS to the utility's electric distribution system.

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.

- c. **BESS Design Approval.** Seller shall provide Host Customer with a copy of the BESS design for approval before Commencement of Installation. Host Customer shall have ten (10) days after receipt to approve or disapprove the design, such approval not to be unreasonably withheld. Any Host Customer disapproval must be commercially reasonable and accompanied with a detailed explanation for such disapproval and requested design changes. Failure by Host Customer to respond within such ten (10) day period shall be deemed approval of the design. If Host Customer disapproves the design, Seller shall use commercially reasonable efforts to modify the design and resubmit it for Host Customer's approval. If the BESS design modifications requested by Host Customer render the BESS non-viable, 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 of the BESS within 365 days after the Effective Date. "Commencement of Installation" means the date that Seller or its installation contractor has begun physical installation of the BESS 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 Term and impacts the ability of the BESS to deliver electricity to the Delivery Point, the 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 BESS 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 BESS 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) and (b) if Host Customer elects to terminate the Agreement in accordance with this Section, Host Customer shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event

can be corrected through repair or restoration of the BESS 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 Seller, 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; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; 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 time for achievement of Commencement of Installation will be automatically extended 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 BESS is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2**, has permission to operate from the relevant Governmental Authority and local electric utility and has met all other administrative requirements from the local electric utility such that the Host Customer's electric account will be applied with the appropriate benefits. Seller shall provide Host Customer with documentation to evidence that the BESS is ready to begin Commercial Operation upon Host Customer's reasonable request.

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

a. **Seller's General Obligations Regarding the BESS.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the BESS, including providing problem diagnosis, on-site repair and preventative maintenance, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state in which the Premises are located. The BESS shall comply with all applicable rules, regulation, and local building codes and Seller, as owner of the BESS, shall be the beneficiary of a manufacturer warranty covering the BESS for a minimum of ten (10) years.

b. **BESS Repair and Maintenance.** Seller may suspend delivery of electricity from the BESS to the Delivery Point for the purpose of maintaining and repairing the BESS; 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.

- c. **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 BESS'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.
- d. **No 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 BESS, 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 BESS, Host Customer may request relocation of the BESS under Section 8 hereof. If a temporary disconnection or removal of the BESS is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the BESS, 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.
- e. **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 BESS or its operation. In the event of any BESS emergency condition, or any damage or loss of the use of the Premises or the BESS, 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.
- f. **Disconnection.** Host Customer shall not cause or allow a disconnection of the BESS 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(e).

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 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) BESS operations and maintenance and (iii) BESS removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the BESS with the Premises' electrical wiring. 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 BESS. 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 BESS. Host Customer shall indemnify Seller for any loss or damage to the BESS 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 BESS. 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 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.

- 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 BESS.**

If, during the 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 BESS or accept the electricity delivered by the BESS for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the BESS, 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 BESS. If the Parties are unable to reach agreement on relocation of the BESS within sixty (60) days after the date of receipt of Host Customer's proposal, Seller may terminate this Agreement pursuant to Section 11(b)(ii).

9. **Removal of BESS upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the BESS from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the BESS is located shall be returned to substantially its original condition (excluding ordinary wear and tear). Seller's warranties under Section 12(c) shall apply, as applicable, during BESS removal. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate BESS removal. If Seller fails to remove or commence substantial efforts to remove the BESS by such agreed upon date, Host Customer may, at its option, remove the BESS to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **BESS Data.**

- a. **Ownership Rights.** Host Customer acknowledges that the BESS collects, produces, and delivers to Seller certain data, information, and content (collectively "**Equipment Data**") through the operation of the BESS. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the

BESS. Host Customer 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 BESS will provide Host Customer with certain operational and performance data, in accordance with BESS services as described in Exhibit 5 attached hereto ("**Host Customer Data**"). Host Customer may use Host Customer Data in any way it elects provided that any such use of the Host Customer 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 BESS and/or Seller's use and ownership of the BESS unless such knowledge, data or information is subject to a Host Customer Freedom of Information Act or California Public Records Act request.

- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 19 and Section 20 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 BESS, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Host Customer agrees to allow Seller and Seller affiliates, its utility, the ISO, governmental bodies, and their affiliates (collectively, "**Grid Service Entities**") to come to its Premises at agreed-upon times to inspect and modify the BESS, including, as agreed-to by Host Customer, installing additional hardware on or around the BESS 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. 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 11(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 sixty (60) 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.

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 11(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 11(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 11(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 as Section 6 of Exhibit 1, and (ii) any other amounts previously accrued under this Agreement and then owed 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 11(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 Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(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 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the BESS 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 BESS following the occurrence of a Default Event by Host Customer pursuant to Section 11(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 11(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 11(b)(ii), nothing in this Section 11 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 11 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.
12. **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 BESS 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 BESS 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 19 related to the SGIP program.

c. **Seller's Warranties.**

- i. If Seller penetrates the roof of the Premises or any Improvement on which the BESS is installed, during BESS installation or any BESS repair, Seller shall warrant and repair any roof or other such damage it causes as a direct result of these roof or other penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the BESS installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
- ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.

iii. 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 12(a) AND 12(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 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(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.

13. **Insurance.**

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

i. **Seller's Insurance.** Seller shall maintain or ensure the following is maintained (a) property insurance on the BESS for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.

(1) The County of Ventura, Its Boards, Agencies, Departments, Districts, Officers, Employees, Agents, and Volunteers are to be named as Additional Insured as respects work done by Seller under the terms of this contract on all policies required (except Workers' Compensation).

(2) Seller agrees to waive all rights of subrogation against the County of Ventura, Its Boards, Agencies, Departments, Officers, Employees, Agents and Volunteers for losses arising from work performed by Seller under the terms of this contract as it pertains to Workers' Compensation.

ii.

iii. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$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, and (ii) be written on an occurrence basis.

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.

14. **Ownership; Option to Purchase.**

a. **Ownership of BESS.**

- i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the BESS, Incentives and Environmental Attributes, and the BESS 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 BESS is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the BESS and all tax filings and reports shall be filed in a manner consistent with this Agreement. The BESS will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the BESS is installed on notice of the ownership of the BESS and the legal status or classification of the BESS as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the BESS 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 BESS 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 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 BESS 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.** At the end of the sixth (6th) Contract Year and at the end of the Initial Term and each Additional Term, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the BESS from Seller on any such date for a purchase price equal to the Fair Market Value of the BESS as of the date of the transfer of title to the BESS. 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 Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed before the end of the Contract Year or the Initial Term or Additional Term, as applicable.
- ii. **Fair Market Value.** The “Fair Market Value” of the BESS 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 BESS, 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 BESS. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the BESS 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.
- iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the BESS to Host Customer upon Seller’s receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The BESS 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 BESS (other than as to title). Seller shall also provide Host Customer all BESS operation and maintenance manuals and logs in Seller’s possession and provide Host Customer basic training on the operation and maintenance of the BESS upon Host Customer’s reasonable request. Upon purchase of the BESS, Host Customer shall assume complete responsibility for the operation and maintenance of the BESS and liability for the performance of (and risk of loss for) the BESS, and, except for any Seller obligations that survive termination under Section 21(d), Seller will have no further liabilities or obligations hereunder for the BESS.

15. **Indemnification and Limitations of Liability.**

- a. **General.** All activities and/or work covered by Seller (the “Indemnifying Party”) will be at the risk of Seller alone. Seller agrees to defend, indemnify, and save harmless the Host Customer (the “Indemnified Party”), including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, whether against Seller, County or others, judgments, debts, demands and liability, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of subsidized in whole or in part by Seller, save and except claims or litigation arising through the sole negligence or wrongdoing and/or

sole willful misconduct of County. Seller agrees to waive all rights of subrogation against County for losses arising directly or indirectly from the activities and/or work covered by Seller.

- 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 15(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 15(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. **Limitations on Liability.**

- i. **No Consequential Damages.** Except for indemnification of third-party claims pursuant to this Section 15, 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 revenues, 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 15(d)(i).

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

16. **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 BESS 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.

17. **Assignment and Financing.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(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 BESS.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i):
 - 1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign (A) its interests in this Agreement to any Financing Party (as defined in Section 17(b)), (B) its interests in this Agreement to any entity through which Seller is obtaining financing from a Financing Party, or (C) its interests and liabilities in this Agreement to 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 unless the assignee assumes Seller's obligations hereunder by binding written instrument on terms satisfactory to Host Customer including as to the assignee's creditworthiness; and
 - 2. Host Customer may, by providing prior notice to Seller, assign this Agreement to an affiliate of Host Customer or a purchaser 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.

- 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 BESS. 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.

18. 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.
- b. **Permitted Disclosures.** Notwithstanding Section 18(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, pursuant to a validly issued subpoena, or subject to a Host Customer Freedom of Information Act or California Public Records Act request (c) is independently developed by the receiving Party, 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 18 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 18. 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 18, 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 or the use of solar or renewable energy involving 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 BESS 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 BESS.

19. **SGIP Requirements.**

- a. **Purpose.** The BESS 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. Seller will provide Host Customer with guidance and support regarding other financial incentives available through other governmental programs or Host Customer's local utility and while the availability and amount of such financial incentives are constantly changing, it is Seller's expectation that the BESS will benefit fully from the SGIP rebate. 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 BESS achieves permission to operate from the Utility is called "**SGIP Revenue**". Host Customer assigns all title and interest in SGIP Revenue to Seller.
- b. **SGIP Payments.** SGIP Revenue has two separate components. The first component is a one-time payment totaling 50% of the total SGIP Revenue as reflected in **Exhibit 1 ("Upfront Payment")**. The second component is the Performance Based Incentive ("**PBI**"), the balance of the SGIP Revenue paid over five years (the "**PBI Term**") based on annual kilowatt-hours discharged and complying with all 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 BESS to: a) allow the BESS to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the PBI Term, and c) permit participation in Grid Services as described in Section 20. The BESS must discharge a minimum of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Revenue. A "Full Cycle" is discharging the full energy capacity of the BESS, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the BESS 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 (utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, incentive claim form document, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Host Customer hereby authorizes Seller, as its SGIP Services Provider, to act on its behalf and to enroll, register, or otherwise include the BESS 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 to assist Host Customer, 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") for the BESS. Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the BESS 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 BESS to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the BESS by Seller (or Seller's affiliates) may override other BESS 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 19 if Host Customer fails to perform any obligation under this Section 19. 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 19, Seller may require Host Customer to make Seller whole because of any loss of SGIP benefits Seller incurs or any returns of SGIP funds Seller must make to program administrators.

20. Grid Services

- a. **Purpose.** In addition to providing the BESS Services listed in Exhibit 5 and the SGIP Services described in Section 19, the BESS 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 greenhouse gas emissions. Host Customer authorizes Seller to enroll the BESS to participate in any Grid Program which may from time to time become available provided that Seller shall operate the BESS under any such Grid Program in a manner that does not disrupt the provision of the BESS Services described in **Exhibit 5**. In some cases, incentives or revenues may be available for participation in a Grid Program ("**Grid Revenue**"). Seller will notify Host Customer if Seller will enroll the BESS in any Grid Program, including what, if any, Grid Revenue will be paid to Host Customer, and Host Customer will have 30 days to opt the BESS out of the Grid Program. If Host Customer does not timely opt out of the Grid Program, the BESS will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the BESS 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 of the BESS 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 BESS in any Grid Program.
- 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.

21. 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 where the BESS is located 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 Ventura County, CA. 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.

- 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. 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 BESS 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 BESS.

- 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. **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.
- l. **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

BESS SERVICES

Energy Services

Backup Power. The BESS is designed to provide backup power if a power outage occurs during which the Premises cannot draw electricity from the grid. The BESS can only power circuits that have been selected by Host Customer and that Seller has approved and connected to the BESS. The BESS may be unable to power the entire premises during a power outage and depending on Premises energy consumption may have limited operating duration that is insufficient to power the Premises for the entire duration of the outage. If Seller causes the BESS to discharge, Seller shall ensure that at least 20% of the BESS energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, such as a Public Safety Power Shutdown (PSPS) event, Seller will use commercial best practices to charge the BESS in advance of that planned grid outage event, and under typical circumstances the BESS would be charged to at or near full capacity before the start of that outage event. Seller will follow Prudent Industry Practices to ensure the BESS is available to provide backup power as described; provided, however, that Seller cannot guarantee the BESS 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 BESS, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the BESS is not operational.** “**Prudent Industry Practices**”, as applied to the BESS, 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 energy generation or storage industry that operate battery storage systems that are similar in size and type as the BESS 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.

Time-Of-Use Management. If Host Customer is on a time-of-use electricity rate schedule or otherwise required to change to a time-of-use rate schedule by participating in this service, Seller will follow Prudent Industry Practices when operating the BESS to lower Host Customer’s energy charges by discharging energy from the BESS during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way 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 BESS is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the BESS to charge from electricity generated by that solar energy 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.

BESS Maintenance Services

Seller, as owner of the BESS, is beneficiary of the BESS manufacturer’s warranty of at least ten (10) years duration. Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the BESS and use this data, including to: (i) provide the Services; (ii) support any manufacturer warranty claims; (iii) 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 (iv) determine when repair or maintenance 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 and shall handle any warranty claims necessary with respect to the BESS throughout the Warranty Term.