

**DRAFT PROTOTYPE AGREEMENT
SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

DESIGN-BUILD-TRANSFER AGREEMENT

NOTICE: This Draft Prototype Agreement sets forth the current requirements that PSE wants the Respondent to address or incorporate into any proposal made to PSE that contemplates the sale of clean energy products to PSE, either on a unit-contingent or not unit contingent basis. It is intended to identify certain, but not all, of the elements of a potential transaction that would be embodied in a definitive design-build-transfer agreement (“DBTA”). The terms presented and/or bracketed herein are indicative of PSE’s expectations and may be subject to negotiation depending upon the particular nature of the proposal and other factors. By submitting its proposal, Respondent acknowledges that the RFP, including this Draft Prototype Agreement, has been prepared by PSE as part of PSE's ongoing process of integrated resource planning and that PSE is considering alternative arrangements for the procurement of energy products. This Draft Prototype Agreement is an integral part of, and subject to, the terms and conditions of the RFP. This Draft Prototype Agreement shall not be interpreted as an offer, agreement or commitment by PSE to acquire any energy product. Also, this Draft Prototype Agreement shall not limit, restrict or obligate PSE with regard to the conduct of its integrated resource planning process, the potential implementation of any plan or program of resource procurement or the actual procurement of any energy product. PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other energy products and/or seek to acquire energy products from one or more parties other than any Respondent. PSE may also modify, change, supplement or delete any and all provisions of this Draft Prototype Agreement, or withdraw and cancel the RFP.

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This Design-Build-Transfer Agreement (“**Agreement**”) is made effective as of the date of the last signature below (the “**Effective Date**”) between **PUGET SOUND ENERGY, INC.** (the “**Owner**” or “**PSE**”) and [_____] (the “**Developer**”) for the design, engineering, procurement, construction, permitting, installation, commissioning, testing and start-up of [_____] ¹ (collectively, the “**System**”) to be located at [To be determined] (the “**Site**”).²

1. DEFINITIONS

The following terms shall have the following meanings in the Contract Documents (as defined below) unless the context otherwise specifies or requires or unless otherwise defined:

1.1 “**Battery Energy Storage System**” or “**BESS**” means the battery energy storage system that is part of the System as described in Schedule #2 and incorporating the Equipment set forth in Schedule #1.

1.2 “**Business Day**” means a day other than a Saturday, Sunday, or a holiday observed by the United States federal government or the State of Washington.

1.3 “**Capability Liquidated Damages (BESS)**” has the meaning set forth in Section 16.3.

1.4 “**Capacity Liquidated Damages (Solar)**” has the meaning set forth in Section 16.2.

1.5 “**Capacity Test**” has the meaning in Schedule #8.

1.6 “**Change Order**” means a written order signed by Owner and Developer after execution of this Agreement, indicating changes in the Scope of Work substantially in the form attached hereto as **Schedule #7**.

1.7 “**Claims**” has the meaning set forth in Section 21.3.

1.8 “**Confidential Information**” has the meaning set forth in Section 23.1.

¹ **Note:** please provide a description of the System here and in the appendices.

² **Note:** please address the site and property arrangements. The drafted suggests that PSE will own the site, but PSE understands that real estate rights to the site will be conveyed to PSE. Please confirm and include appropriate BTA provisions for the transfer of such property rights and title to the System at closing in the next draft.

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1.9 “*Construction Documents*” consist of the architectural and engineering plans, drawings and specifications (including the specifications for Major Equipment as set forth in **Schedule #1** and the Scope of Work as set forth in **Schedule #2**), together with all addenda and revisions thereto, as issued by Developer and Developer’s Subcontractors and subject to Owner’s approval as provided in this Agreement.

1.10 “*Construction Period Credit Support*” has the meaning set forth in Section 10.1.1.

1.11 “*Contract Documents*” consist of this Agreement, together with all exhibits, and schedules hereto, the Construction Documents, the Project Schedule and any mutually executed, written modifications and amendments to any of the aforementioned, including Change Orders.

1.12 “*Contract Sum*” is the total cost of the Work as set forth in Section 13.1.

1.13 “*COVID-19 Event*” has the meaning set forth in Section 15.3.

1.14 “*Credit Support*” means (a) cash collateral, (b) a payment and performance bond in the form and substance of Exhibit A, issued by a surety that is rated at least “A” by Standard & Poor’s Global Ratings, or at least “A2” by Moody’s Investors Service, Inc., or at least “A-/VII” by the A.M. Best Company, or is otherwise reasonably acceptable to Buyer, (c) an irrevocable standby letter of credit, the form of which is attached as Exhibit B, that is (a) is issued by a U.S. commercial bank or a U.S. branch of a foreign bank with total assets of at least ten billion dollars (\$10,000,000,000) and having a general long-term senior unsecured debt rating of A minus or higher as rated by Standard & Poor’s Global Ratings. or A3 or higher as rated by Moody’s Investors Service, Inc., or A minus or higher as rated by Fitch Rating’s Inc., or (d) a combination of the foregoing.

1.15 “*Day*” means a calendar day unless otherwise specifically defined.

1.16 “*Defect*” or “*Defective*” has the meaning set forth in Section 19.1.

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1.17 “*Delay Liquidated Damages*” has the meaning set forth in Section 6.5.

1.18 “*Design Criteria*” means the criteria pursuant to which Developer shall design the System as forth in **Schedule #2**.

1.19 “*Developer Event of Default*” has the meaning set forth in 18.2.

1.20 “*Developer Permits*” means all Governmental Approvals other than Owner Permits.

1.21 “*Developer’s Supervisors*” has the meaning set forth in Section 5.1.

1.22 “*Equipment*” means all of the equipment, materials, apparatus, structures, components, special tools, instruments, appliances, supplies and other goods required by the terms of this Agreement to complete the Work and to be incorporated into the System, including the Major Equipment.

1.23 “*Final Completion*” means (i) the full completion of all Work, including the satisfaction of all conditions for Substantial Completion and the conditions to its achievement remain satisfied and the completion of all Punchlist Work (or that Owner has agreed to withhold any remaining Punchlist Holdback to complete any items of Punchlist Work not completed by Developer in accordance with the terms hereof); (ii) any amounts due and owing from Developer to Owner have been paid, including but not limited to any Liquidated Damages; (iii) all of Developer’s equipment has been removed from the Site and all of Developer’s and its Subcontractor’s personnel have left the Site, and all surplus materials, waste, rubbish and construction facilities other than those to which Owner holds title have been removed from the Site; (iv) Developer has delivered all required final lien waivers in accordance with Section 4.5; (v) the Final Completion Documents have been delivered and the Developer Permits required after Final Completion and not assigned in connection with Mechanical Completion have been validly assigned to Owner; and (viii) Developer shall have delivered the true, correct, and complete Final Completion certificate in form provided in Schedule #9 from Developer and the Independent Engineer.

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1.24 “*Final Completion Documents*” means the documents required to be delivered to Owner at the time of Final Completion as a condition to final payment, all as set forth in **Schedule #4** annexed hereto.

1.25 “*Force Majeure Event*” means any condition, event or circumstance, including the examples set forth below, but only if, and to the extent: (i) such condition, event or circumstance is not within the reasonable control of the Party affected; (ii) such condition, event or circumstance, despite the exercise of reasonable diligence, could not have been prevented, avoided or removed by such Party; (iii) such condition, event or circumstances has a material adverse effect on the ability of the affected Party to fulfil its obligations under this Agreement; and (iv) such condition, event or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement or the negligence of such Party. By way of example, such events, conditions or circumstances may include strikes (other than strikes involving only the employees of a Party and/or its Subcontractors), manufacturer equipment delays, lock-outs or other labor troubles (other than labor troubles involving only the employees of a Party and/or its Subcontractors), floods, severe inclement weather preventing Work, fires, acts of God, import restrictions or impositions or changes to any existing government orders, tariffs, import fees, charges, duties (including, without limitation, antidumping or countervailing duties), trade remedies, relief, minimum prices or similar penalties or forms of trade relief or actions that may be imposed or taken by a Governmental Authority, whether applied retroactively or otherwise, civil unrest, state, local or municipal political emergencies, Utility delays and disease, epidemic, or pandemic affecting availability of materials, equipment, employees, contractors or subcontractors (except for COVID-19 Events which shall be governed by Section 15.3 hereto).

1.26 “*Governmental Approvals*” shall mean each national, federal, provincial, state, county, municipal, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit (including, where applicable, conditional permits), right of way or other approval with, from or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit, that is required by Legal Requirements for the

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performance of the Work, the Services or otherwise for the development, construction, ownership, operation, installation, commissioning or maintenance of the System.

1.27 “*Governmental Authorities*” shall mean the United States of America, and any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government including any governmental or quasi-governmental entity or independent system operator or regional transmission operator having jurisdiction over Owner, Developer, the Site, the Work, the Services, the System and/or the Utility.

1.28 “*Guaranteed BESS Capabilities*” has the meaning set forth in Section 16.2.

1.29 “*Guaranteed Solar System Capacity*” has the meaning set forth in Section 16.2.

1.30 “*Guaranteed Date*” means, in respect of each of Mechanical Completion, Substantial Completion and Final Completion, the date on which such Guaranteed Milestone shall be achieved as set out in the Project Schedule.

1.31 “*Guaranteed Milestone*” means each of (i) Mechanical Completion; (ii) Substantial Completion; and (iii) Final Completion.

1.32 “*Hazardous Material*” means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under 49 U.S.C. §5103, and it includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table. (See 49 CFR 172.101).

1.33 “*Indemnifying Party*” has the meaning set forth in Section 21.3.

1.34 “*Indemnitees*” has the meaning set forth in Section 21.3.

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1.35 “*Independent Engineer*” means an independent third party licensed professional engineer that is acceptable to the parties.

1.36 “*Legal Requirements*” shall mean all present and future laws, codes, ordinances, statutes, requirements, orders and regulations of a Governmental Authority, ordinary and extraordinary, foreseen and unforeseen, all industry safety standards and all other standards and regulations referred to elsewhere in the Contract Documents and all directions, requirements, orders, notices of violations and official and written judicial interpretations thereof.

1.37 “*Liquidated Damages*” means collectively, the Capability Liquidated Damages (BESS), Capacity Liquidated Damages (Solar), and the Delay Liquidated Damages.

1.38 “*Losses*” has the meaning set forth in Section 21.3.

1.39 “*Major Equipment*” means the Photovoltaic Modules, Mounting System hardware, Inverter(s), and Battery Energy Storage System equipment, and such other equipment as identified on the “**Major Equipment List**” attached hereto as **Schedule #1**.

1.40 “*Major Equipment Supplier*” means a person or entity retained by Developer to provide, or through which Developer purchases, the Major Equipment.

1.41 “*Mechanical Completion*” means (i) that the System has been completely installed consistent with the Scope of Work and the Construction Documents, is mechanically, electrically and structurally complete and is ready for initial start-up, adjustment and testing in accordance with the requirements of this Agreement, but prior to the interconnection and energization of the System with the Utility’s grid and the commencement of commissioning and applicable Utility tests for the System, (ii) the Mechanical Completion Documents have been delivered and the Developer Permits required after Mechanical Completion (except for any to be assigned in connection with Final Completion) have been validly assigned to Owner; and (ii) Developer shall have delivered the true, correct, and complete Mechanical Completion certificate in form provided in Schedule #9 from Developer and the Independent Engineer.

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1.42 “*Mechanical Completion Documents*” means the documents required to be delivered to Owner at the time of Mechanical Completion as a condition to payment, all as set forth in **Schedule #4** annexed hereto.

1.43 “*Operating Period Credit Support*” has the meaning set forth in Section 10.1.3.

1.44 “*Others*” means other contractors and/or persons at the Site, who are not employed or retained by Developer, its Subcontractor(s) or Major Equipment Suppliers.

1.45 “*Owner Caused Delay*” means any delay in the Developer’s performance of the Work in accordance with the Project Schedule that has been demonstrably caused by a material failure by Owner to perform any of its obligations under this Agreement that either cause (i) a delay in Developer’s performance of the Work in accordance with the Project Schedule or (ii) an actual, substantiated increase in Developer’s cost to perform the Work.

1.46 “*Owner Permits*” means the Governmental Approvals specified in the Scope of Work as being Owner’s responsibility.

1.47 “*Owner’s Representative*” has the meaning set forth in Section 14.

1.48 “*Parties*” means Developer and Owner.

1.49 “*Party*” means Developer or Owner, as applicable.

1.50 “*Planned Nameplate Capacity*” means [] with respect to the Solar System and [] with respect to the BESS.

1.51 “*Post-Construction Period Credit Support*” has the meaning set forth in Section 10.1.2.

1.52 “*Progress Schedule*” has the meaning set forth in Section 6.1.

1.53 “*Project Schedule*” has the meaning set forth in Section 6.1

1.54 “*Prudent Industry Practices*” means those standards of care, skill and diligence normally practiced by engineering, procurement and construction firms

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in the solar energy and energy storage industry in performing services of a similar kind in the jurisdiction in which the Work will be performed and in accordance with good engineering design practices, sound construction procedures, Legal Requirements and other standards established for such work. Prudent Industry Practices are not intended to be limited to optimum practices or methods, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any given project under consideration.

1.55 “**Public Party**” has the meaning set forth in Section 23.4.

1.56 “**Punchlist Amount**” means the cost or estimated cost to complete any item of Punchlist Work, as agreed between the Parties.

1.57 “**Punchlist Holdback**” means an amount equal to one hundred fifty percent (150%) of the Punchlist Amount attributable to each item of Punchlist Work.

1.58 “**Punchlist Work**” means all incomplete minor elements of the Work identified in accordance with this Agreement following Substantial Completion and as agreed between the Parties.

1.59 “**Scope of Work**” means Services and Work set forth in **Schedule #2**, which shall include such construction and services necessary or incidental to fulfill Developer’s obligations for the Work in conformance with this Agreement, the other Contract Documents and Prudent Industry Practices.

1.60 “**Services**” means the pre-construction, architectural, engineering and other professional services necessary or incidental to fulfill Developer’s obligations for the Work in accordance with the Contract Documents.

1.61 “**Solar System**” means the solar system that is part of the System as described in **Schedule #2** and incorporating the Equipment set forth in **Schedule #1**.

1.62 “**Site**” has the meaning set forth in the preamble.

1.63 “**Subcontractor**” means a person or entity retained or engaged by Developer as an independent contractor to provide any of the labor, materials, equipment and/or services necessary to complete a specific portion(s) of the Scope of

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Work, together with any subcontractors thereof of any tier. For purposes of this Agreement, Subcontractors shall include architects, engineers, or other consultants and/or professionals as may be engaged by Developer for the Services, but shall not include Major Equipment Suppliers.

1.64 “*Substantial Completion*” means when (i) Mechanical Completion has been achieved and the conditions to its being achieved remain satisfied; (ii) the Work (other than Punchlist Work) has been completed in conformance with the terms and conditions of the Contract Documents and the System is capable of being operated in a safe and prudent manner; (iii) all applicable Governmental Approvals have been received (and are in full force and effect) and copies thereof have been delivered to Owner; (iv) the System has been interconnected with the Utility’s grid and energized and commissioning completed such that the System is operating normally and continuously; (v) the Utility has granted permission to operate; (vi) Owner has received all lien waivers required to be delivered as of such date in accordance with Section 4.5; (vii) Developer has paid all Liquidated Damages required to be paid pursuant to Section 6.5 as of the proposed date of Substantial Completion; and (viii) with respect to the Solar System, either the Capacity Test has (a) been successfully run and the Solar System has achieved 97% of the Planned Nameplate Capacity, or (b) the results of the Capacity Test reflect achievement of at least the Guaranteed Solar System Capacity and Developer has paid to Owner all Capacity Liquidated Damages (Solar System) due and payable pursuant to Section 16.2 with respect to the Solar System; (xviii) with respect to the BESS, either the Capacity Test has (a) been successfully run and the BESS has achieved [], or (b) the results of the Capacity Test reflect achievement of at least the Guaranteed BESS Capabilities and Developer has paid to Owner all Capability Liquidated Damages (BESS) due and payable pursuant to Section 16.2 with respect to the BESS, and (ix) Developer shall have delivered to Owner the true, correct, and complete Substantial Completion certificate in form provided in Schedule #9 from Developer and the Independent Engineer.

1.65 “*System*” has the meaning set forth in the preamble and as further described in **Schedule #2** and incorporating the Equipment set forth in **Schedule #1**.

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1.66 “*System Operation & Maintenance Manual*” means the manual prepared by Developer for the operation and maintenance of the System with maintenance protocols based on manufacturers’ recommendations and requirements.

1.67 “*Utility*” means the local utility company that provides electricity to the Site.

1.68 “*Warranty*” has the meaning set forth in Section 19.1.

1.69 “*Warranty Period*” has the meaning set forth in Section 19.1.

1.70 “*Work*” means all work, labor, fabrication, materials, equipment, supplies, accessories, hoisting, scaffolding, packaging, truck freight, delivery, disposal, power hookups, installations, protection, shop drawings, supervision, permits, and all other services and facilities necessary for the proper construction and completion of the System in accordance with, and as are reasonably inferred from, the Contract Documents, Prudent Industry Practices and the Legal Requirements.

1.71 “*Work Product*” has the meaning set forth in Section 2.4.

1.72 Terms not expressly defined in the Contract Documents shall be interpreted in accordance with generally established use of such terms within the architectural, engineering and construction industries, assuming first class construction and otherwise in conformance with Prudent Industry Practices. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “*include*,” “*includes*” and “*including*” shall be deemed to be followed by the phrase “*without limitation*”.

2. SCOPE OF WORK

2.1 Developer’s Services include all planning, programming, design,³ engineering, procurement, installation, construction, administration, management, training and coordination, commissioning and verification services required for the Work, including without limitation all necessary architectural design, engineering,

³ **Note:** please confirm whether the design will be a part of this Agreement and included in the schedules. If not, please propose a process for approval of the design.

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zoning compliance, code compliance, budgeting and scheduling, as well as design for all temporary structures, rigging, hoists, scaffolding and bracing, all consistent with the Scope of Work, the Construction Documents, Prudent Industry Practices and Legal Requirements.

2.2 Developer shall be responsible for the supervision and coordination of the Scope of Work, including the design and engineering with respect to the System subject to the Design Criteria, and all construction means, methods, techniques, sequences and procedures utilized, including those specified in the Contract Documents.

2.3 Developer will work with Owner to design an acceptable installation and work plan consistent with the Scope of Work.

2.4 Title to all drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Developer to Owner under this Agreement (the "**Work Product**") shall vest in Owner upon Owner's receipt of such Work Product except with respect to intellectual property as provided in this Section 2.4. To the extent any such Work Product constitutes or incorporates intellectual property and/or confidential information of Developer or any Subcontractor, Developer shall provide, or obtain from the providing Subcontractor, for the benefit of Owner and its successors and assigns, a non-exclusive, irrevocable, perpetual, royalty-free license to use, copy, reproduce, share and sub-license such intellectual property for the purpose of the ownership, operation, maintenance, repair, modification or expansion of the System (or any portion, subsystem or component thereof), but not for any resale, leasing or expansion of such Work Product (except in conjunction with a permitted assignment of this Agreement or sale of the System) or for any other project or any other commercial purpose. Developer shall defend, indemnify, and hold the Owner and the other Indemnitees harmless from and against any and all losses incurred by such Indemnatee arising from or based on any Claim relating to any actual or alleged unauthorized disclosure, use or misappropriation of any intellectual property or any actual or alleged infringement or other violation of any right in, to or under, any intellectual property arising out of Owner's use or ownership of the Work or the Work Product, provided Owner's use of the Work or the Work Product, as applicable, is in accordance with this Agreement.

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3. DEVELOPER'S REPRESENTATIONS AND RESPONSIBILITIES

3.1 Developer represents, warrants and covenants that it and/or its Subcontractors shall be duly licensed and registered to perform such portion of the Services and/or Work as it or they shall be called upon to perform, as may be required in the jurisdiction where the Site is located. Developer shall provide Owner, upon request, evidence of such licensing and registration.

3.2 Developer represents, warrants and covenants that it will (i) furnish its best skill and judgment in performing the Services and Work; (ii) perform the Services and Work in accordance with the Contract Documents, Prudent Industry Practices and Legal Requirements; and (iii) cooperate with Owner and Others in furthering the best interests of Owner with respect to the Work.

3.3 Developer represents and warrants that (i) it has visited the Site and has become familiar with (and has accommodated in the Contract Sum) all readily determinable physical or other conditions applicable to the Scope of Work that are apparent from a visible inspection of the Site and/or are stated in or inferable in the Site conditions disclosed by Owner pursuant to Section **Error! Reference source not found.** and has correlated, and shall continue to correlate, all personal observations with the requirements of the Contract Documents, and shall make any necessary adjustments or corrections resulting therefrom, and (ii) the foregoing conditions under which the Scope of Work will be performed will not hinder Developer from fulfilling its obligations under this Agreement.

3.4 Developer represents, warrants and covenants that it is (and/or its Subcontractor(s) are) or will be prior to the commencement of any Work or Services hereunder knowledgeable as to all Legal Requirements applicable to the performance of the Scope of Work. All Services and Work shall be done in accordance with all Legal Requirements and requirements of all Governmental Authorities. Developer shall give any and all notices required and comply with all Legal Requirements, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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3.5 Developer represents that the Contract Sum as set forth in this Agreement is based on the Scope of Work and the Construction Documents in existence as of the Effective Date.

3.6 Developer represents, warrants, and covenants that all labor wage payments made in connection with the performance of the Work shall be made in compliance with all Legal Requirements.

3.7 At all times during the performance of the Work and the duration of this Agreement (or for such longer period as may be required pursuant to this Section 3.7), Developer shall maintain (and, where appropriate, may require its Subcontractors to maintain) insurance as follows:⁴

- (i) Commercial General Liability (“CGL”) coverage of not less than One Million Dollars (\$1,000,000) (per occurrence)/Two Million Dollars (\$2,000,000) (aggregate); if policy is written on a ‘claims-made’ basis, the policy will include a 2-year tail after the completion of the Agreement;
- (ii) Excess Umbrella Liability coverage of not less than Five Million Dollars (\$5,000,000) (per occurrence)/Five Million Dollars (\$5,000,000) (aggregate);
- (iii) Automobile Liability coverage of not less than One Million Dollars (\$1,000,000) per accident;
- (iv) Worker’s Compensation at Minimum Statutory Limits (as required by the law of the state where the Site is located) per accident/disease; and
- (v) Installation Insurance coverage covering Developer, its Subcontractors, and Owner as their interests may appear covering the System at full replacement value from the physical loss or damage caused by perils covered by a standard All-Risk form or equivalent coverage.

3.8 Developer shall provide Owner with Certificates of Insurance evidencing such insurance, naming Owner as additional insured, and there will be no cancellation, reduction, or non-renewal in coverage without Developer first giving

⁴ **Note:** please include errors and omissions insurance or professional liability insurance given the design scope, as well as employers’ liability insurance.

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Owner thirty (30) days' prior written notice. All insurers shall have an A.M. Best rating of at least an A-VIII. Developer's insurance will be primary with respect to all of Developer's obligations under this Agreement. Developer shall assure that all of its Subcontractors carry industry standard insurance for the scope of work and value of work being provided. All policies shall be endorsed with a waiver of subrogation in favor of Owner. Insurance coverage and limits referred to above will not in any way limit the liability of Developer.

4. SUBCONTRACTOR(S); SUPPLIERS

4.1 Developer may hire, retain, contract with, and manage such Major Equipment Suppliers and Subcontractor(s) as Developer shall deem necessary to perform and complete the Scope of Work subject to the terms of this Agreement. Developer, as between Developer and Owner, shall be fully responsible and liable for all Services and Work performed by, and all acts or omissions of, each Major Equipment Supplier and each Subcontractor arising out of the performance of the Services and/or Work.

4.2 Developer shall be responsible for providing any Subcontractor(s) with all necessary onsite direction and supervision. Owner shall not assume any responsibility for the Subcontractor(s), including completion of the Scope of Work, payment for services or any other supervisory responsibilities.

4.3 Developer shall be solely responsible for the selection and retention of Subcontractor(s), provided Developer shall furnish Owner with the name, address, credentials and other relevant information with respect to any Subcontractor(s) engaged by Developer.

4.4 Upon Owner's request, Developer will provide Owner with Certificates of Insurance from its Subcontractor(s).

4.5 Developer shall provide, and shall require and cause each Subcontractor providing services or equipment to provide, lien waivers and releases in favor of Owner with respect to all progress payments and final payments. Nothing contained in the Contract Documents shall create any contractual relationship

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between any Subcontractor and Owner, nor create any obligation on the part of Owner to pay or to see to the payment of any sum to any such Subcontractor.

4.6 Developer shall perform all of its obligations and agreements with each of its Subcontractors and Major Equipment Suppliers and shall fully pay each such party the agreed price for its Services and/or Work properly completed. In the event Developer fails to pay any Subcontractor or Major Equipment Supplier as required, Owner shall have the option (but not the obligation), upon written notice to Developer, to pay such party directly and deduct the sum so paid from the Contract Sum.

4.7 All subcontracts between Developer and any of its affiliates and its or their Subcontractors shall require such Subcontractors to comply with the requirements of this Agreement, insofar as applicable. No subcontractor or purchase order shall bind or purport to bind Owner, but each subcontract and purchase order with a Subcontractor or Major Equipment Supplier shall provide for the assignment of such subcontract or purchase order to Owner or, at Owner's request, one of Owner's affiliates, upon termination of this Agreement. If Owner requests to assume any subcontract or purchase order as described in this Section 4.7, Developer shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to affect such assumption by Owner.

5. SUPERVISION; PERFORMANCE OF THE WORK; CONSTRUCTION SERVICES

5.1 The Services and Work shall be supervised by the individuals ("**Developer's Supervisors**") identified in **Schedule #5** attached hereto. Developer's Supervisors assigned to the Work shall, if required under Legal Requirements, be duly licensed in the city and state of the Site. Developer's Supervisors are the only individuals authorized to supervise and direct the performance of the Scope of Work and Developer shall not, except upon the request of, or with the approval of, Owner in each instance, make any substitutions to Developer's Supervisors. Developer's Supervisors shall be authorized to act for Developer in all matters relating to the Scope of Work, and all directions given by them shall be as binding as if given to Developer. Developer's Supervisors shall be available for consultation with Owner and Others at

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reasonable times and shall not accept any other assignment that shall materially affect their attention to the performance of the Services or Work, as applicable.

5.2 Developer shall supervise the performance of the Services and Work as necessary to achieve timely completion of the Work in accordance with the provisions of this Agreement. Developer shall complete the Work in accordance with the Project Schedule, except and only to the extent that such dates may be extended as a result of Force Majeure Events or Owner Caused Delays.

5.3 The Work shall be executed in accordance with the Contract Documents in a good, workmanlike manner and in accordance with Prudent Industry Practices. All materials and Equipment used in the Services and the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Scope of Work and shall be new, except as otherwise expressly provided in the Contract Documents.

5.4 Developer will order all Equipment required for the Work after approval of the Construction Documents and the Project Schedule by Owner.

5.5 Developer shall not substitute Equipment or materials specified in the Contract Documents without prior written approval of Owner. Developer will give Owner reasonable notice in writing of its desire to substitute Equipment or materials, setting forth (i) the material differences, if any, between the materials and Equipment specified in the Contract Documents and any proposed substitutions and all supporting data, including technical information necessary for a complete evaluation of the substitution; and (ii) any proposed adjustment, if any, in the Contract Sum in the event the substitution is accepted, together with such supporting documentation as is required to evidence such proposed adjustment.

5.6 Developer and Owner shall, to the extent reasonable and practicable, agree on a date for delivery of Equipment, storage thereof at the Site and for the installation thereof. If the agreed delivery date is postponed at the request of Owner after the Equipment has been purchased by Developer, then Developer shall put such Equipment in safe storage at the Site at Owner's expense. Developer shall ensure that

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all Equipment, materials, systems and other items are insured while in transit and storage (whether on Site or off Site).

5.7 Developer, or its Subcontractor(s), shall install all Equipment in accordance with the manufacturer's specifications so as to preserve all manufacturer warranties.

5.8 Developer or its Subcontractor(s) shall install all electrical equipment, conduit and wiring in accordance with current NEC standards, and such installation shall conform to all Legal Requirements.

5.9 Developer warrants that good title to the Equipment and other portions of the Work shall transfer to Owner, free and clear of all liens and encumbrances, upon the earlier to occur of (i) payment therefor by Owner; or (ii) delivery thereof to the Site. As Equipment is paid for prior to delivery, Developer will segregate (to the greatest extent possible) such Equipment from other property and mark it as belonging to Owner. Care, custody, and control of the Work, and risk of loss, shall pass to Owner upon the earlier of (a) the date on which Substantial Completion has been achieved in accordance with Section 6.3; or (b) the termination of this Agreement.

6. CONTRACT TIME; PROJECT SCHEDULE; DELAY LIQUIDATED DAMAGES

6.1 Attached hereto as **Schedule #3** is a schedule for the Scope of Work identifying the main activities required for the Work (as well as the dependency relationship between those activities) and the key milestones by which those activities will be completed (including the Guaranteed Dates) (the "**Project Schedule**"). The Project Schedule shall be deemed to be incorporated into this Agreement as a Contract Document. Developer shall complete all portions of the Work necessary to achieve any milestone dates (including the Guaranteed Dates) as set forth in the Project Schedule. Each month the Developer shall provide an updated progress schedule (each a "**Progress Schedule**"), referenced to the Project Schedule and showing all delays, impacts or changes thereto in order to reflect and account for all events and occurrences which may delay completion of the Work. All revisions to the Project Schedule shall be subject to Owner's review and approval.

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6.2 Developer agrees that Owner's review and approval of documentation shall not affect, diminish or relieve Developer of its responsibilities to Owner under this Contract. Developer further agrees Owner's agreement to the Project Schedule or any subsequent Progress Schedule prepared by Developer does not constitute any representation, warranty or acceptance by Owner of the reasonableness of the Project Schedule or any Progress Schedule or its logic, nor of any specific sequencing, phasing or scheduling of the individual aspects of the Work, and does not constitute a representation by Owner that such work can be performed within the time or in the manner set forth in the Project Schedule or any Progress Schedule.

6.3 When Developer believes that it has satisfied the requirements of a Guaranteed Milestone, Developer shall provide written notice to Owner of the same, together with supporting documentation evidencing that each requirement to that Guaranteed Milestone has been satisfied. Owner shall, within 15 (15) Business Days after receipt of such notice, notify Developer in writing whether Developer has fulfilled the requirements to complete such Guaranteed Milestone. If Developer has not fulfilled the requirements for such Guaranteed Milestone, Owner shall specify in such notice to Developer in reasonable detail the reasons that such requirements have not been fulfilled, and Developer shall promptly take the appropriate corrective action. Upon completion of such corrective action, Developer shall deliver to Owner a new notice, and the provisions of this Section 6.3 shall apply with respect to the new notice in the same manner as the original notice. The date on which Developer achieves the Guaranteed Milestone shall be the date set forth in the notice for that Guaranteed Milestone that is signed by Developer and countersigned by Owner.

6.4 Prior to Substantial Completion, Developer shall provide a draft list of Punchlist Work to Owner for Owner's review and approval. The proposed list of Punchlist Work shall include a Punchlist Amount for the completion or repair of each item of Punchlist Work. Owner shall promptly notify Developer of any proposed changes to the proposed list and the Parties shall work together to promptly finalize the list of Punchlist Work. Concurrent with the payment to be made by Owner with respect to Developer's achievement of Substantial Completion, Owner shall be entitled to hold back from such payment the Punchlist Holdback for all of the

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Punchlist Work that has not been completed or deemed completed at such time. As Developer completes the Punchlist Work, Owner shall release to Developer on a monthly basis that portion of the Punchlist Holdback withheld equal to the Punchlist Amounts for such completed Punchlist Work. Without limiting Developer's obligation to complete the Punchlist Work, if the Parties mutually agree that Owner may complete any items of the Punchlist Work in lieu of Developer's completion thereof, then Owner may complete such Punchlist Work and withhold the applicable portion of the Punchlist Holdback attributable to such items of Punchlist Work.

6.5 If Developer fails to achieve any Guaranteed Milestone by or before the applicable Guaranteed Date, except to the extent such failure is caused by a Force Majeure Event or an Owner Caused Delay, Developer agrees to pay to Owner liquidated damages for each day that such Guaranteed Milestone is not achieved after the applicable Guaranteed Date in the amount of [] Dollars (\$[]) per day (the "**Delay Liquidated Damages**"); provided, however, that Developer's aggregate liability for Delay Liquidated Damages under this Agreement shall not exceed [] percent ([]%) of the Contract Sum. Developer and Owner each acknowledge that they have discussed and reviewed the nature and extent of the damages that Owner is likely to incur in the event that a Guaranteed Milestone is not achieved by the applicable Guaranteed Date, and based on the foregoing acknowledge and agree that the Delay Liquidated Damages established in this Section 6.5 are based upon a reasonable approximation of Owner's damages in such event, constitute agreed and liquidated damages, and are not a penalty.

6.6 Owner acknowledges and agrees that the Delay Liquidated Damages are Owner's sole monetary remedy as a result of Developer's failure to achieve a Guaranteed Milestone by or before the applicable Guaranteed Date. For the avoidance of doubt, Developer acknowledges and agrees that the foregoing limitation applies only to Delay Liquidated Damages and does not limit or preclude Owner's remedy for any other breach of contract or other act or omission other than Developer's failure to achieve a Guaranteed Milestone by or before the applicable Guaranteed Date.

7. SAFETY

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7.1 Developer, either directly or through the Subcontractors, shall enforce reasonable safety procedures (including without limitation all safety procedures required by Legal Requirements), discipline and good order among Subcontractor(s) or other persons performing the Scope of Work.

7.2 Developer shall take all necessary precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees or other persons at the Site, including employees of any Others; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off Site, under care, custody or control of Developer, its Subcontractors or Major Equipment Suppliers; and (c) Owner's buildings and other property at the Site or adjacent thereto.

7.3 Developer agrees that the prevention of accidents to workers engaged in the Work is the responsibility of Developer and Developer agrees to comply with all Legal Requirements concerning safety applicable to the Work.

7.4 Developer shall promptly report in writing to Owner all accidents whatsoever arising out of or in conjunction with the performance of the Work whether on or adjacent to the Site, which causes death, personal injury, or property damages, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to Owner. If any claim is made by anyone against Developer or any Subcontractor on account of any accident, Developer shall promptly report the facts in writing to Owner.

7.5 For the avoidance of doubt, Owner will not be responsible for any safety procedures, precautions, or protocols relating to the performance of the Work or Services by Developer, any Subcontractor, or any of their respective agents or employees.

8. MATERIALS

8.1 All materials and Equipment are to be new and of the best quality of the kind specified unless material or Equipment of inferior type is distinctly specified in the Scope of Work and at the time of installation all material and Equipment shall be in working order. All materials and Equipment shall come with industry standard

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manufacturer warranties. All materials and Equipment shall be fully compliant with standards, the Scope of Work, the Contract Documents and all other applicable Legal Requirements. When title transfers to Owner, materials and Equipment shall not be subject to any conditional bill of sale, security agreement, financing statement, chattel mortgage, or any other claim, lien or encumbrance, except as required under Legal Requirements. All materials and Equipment shall be delivered as needed for the uninterrupted and reasonably speedy progress and completion of the Work, and so as not to unreasonably encumber the Site. Developer shall, if required by Owner or otherwise necessary to adhere to the Project Schedule, order and/or cause the materials and Equipment to be manufactured in advance and to be warehoused as necessary at the Site without charge to Owner.

8.2 Developer shall obtain and provide to Owner the original warranties for all Equipment supplied by each Subcontractor or Equipment supplier (including the Major Equipment Suppliers). All such warranties for Equipment shall be consistent with market warranty terms available from top-tier manufacturers. Developer shall ensure Owner is a named beneficiary under such warranties to the extent possible. Developer shall assign such warranties to Owner upon the earlier of (i) the end of the Warranty Period; or (ii) earlier termination of the Agreement in accordance with Section 18.

9. PERMITS; FEES; REBATES

9.1 Developer and/or the Subcontractor(s), at Developer's sole cost and expense, shall secure and maintain all Developer Permits, including but not limited to the building permit.⁵ Developer will provide Owner with copies of all applications for Developer Permits promptly after they have been made, and shall keep Owner informed on a reasonably current basis of the progress of such applications, and provide Owner with copies of all Developer Permits obtained. Developer shall provide requested assistance to Owner with respect to obtaining, maintaining and complying with any Owner Permits. During performance of all aspects of the Work, Developer shall comply, and shall cause the Subcontractors to comply with, all Legal

⁵ **Note:** Will Developer have all required permits at the Effective Date? If not, please propose a notice to proceed provision.

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Requirements and all Governmental Approvals. Developer will provide Owner copies of any material correspondence with any Governmental Authorities relating to the Governmental Approvals or Legal Requirements within five (5) Days of the date Developer transmits or receives such correspondence, to the extent such correspondence relates to the performance of Developer's obligations under this Agreement.

9.2 Developer shall obtain all necessary Utility approvals and shall pay all fees due to the Utility in connection with the Utility interconnection, including application fees. Developer shall not be responsible, however, for payment for upgrades or changes to any existing Site electrical system(s), equipment (other than the Major Equipment needed for the System in **Schedule #1**), or survey/research projects that may or may not be required by the Utility, upgrades or changes to Utility-owned equipment, or Utility-supplied electrical service. Developer shall use commercially reasonable efforts to determine if the Utility will require any such surveys, upgrades or changes to Utility-owned equipment, or Utility-supplied electrical service, and shall advise Owner with respect to same as soon reasonably practical.

9.3 Developer will, at its own cost and expense, use commercially reasonable efforts to advise Owner about, and to assist Owner in applying for, available rebates, incentives, credits and the like, whether from manufacturers, utilities, governmental entities and/or others, arising from or related to the purchase and installation of the Major Equipment and/or other aspects of the Scope of Work. It is understood and agreed that Developer shall have no responsibility for, and shall not be obligated to Owner in the event that, any rebate, incentive, credit or the like is not brought to Owner's attention, or is not available to or obtained by Owner.

10. CREDIT SUPPORT

10.1 Credit Support Requirements.

10.1.1 Within five (5) Business Days of the Effective Date and thereafter until Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of \$[] (the "Construction Period Credit Support").

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10.1.2 Within five (5) Business Days of Final Completion until the first (1st) anniversary of Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of \$[] (the "Post-Construction Period Credit Support").

10.1.3 Within five (5) Business Days of the first anniversary of Final Completion and continuing until the fifth (5th) anniversary of Final Completion, Developer shall be obligated to furnish Credit Support to Buyer in the aggregate amount of \$[] (the "Operating Period Credit Support").

10.2 Owner shall be entitled to draw upon and/or be paid from any Credit Support provided by the Developer for any obligation of Developer arising under this Agreement and the Contract Documents that is not paid when due (subject to any applicable cure periods). In the event Buyer draws upon and/or is paid from any Credit Support, Developer shall have no obligation to replenish such Credit Support.

10.3 The Construction Period Credit Support shall be returned to Developer within four (4) Business Days after Developer furnishes the Post-Construction Period Credit Support in accordance with Section 10.1.2. The Post-Construction Period Credit Support shall be returned to Developer or released within four (4) Business Days after Developer furnishes the Operating Period Credit Support in accordance with Section 10.1.3. The Operating Period Credit Support shall be returned to Developer on the fifth (5th) anniversary of Final Completion. Notwithstanding anything herein to the contrary, upon the expiration or earlier termination of this Agreement, the Credit Support required under Section 10.1 shall remain in place in an amount equal to the aggregate value of the claims by Owner under this Agreement made in good faith and then pending, if any, but no more than the aggregate amount required under Section 10.1, which Credit Support provided under Section 10.1 shall only then be released once such pending claims are resolved and any monies due in connection therewith have been paid to Owner.

11. PRIOR SERVICES AND PRE-CONSTRUCTION SERVICES

11.1 Developer and Owner acknowledge that Developer may have provided certain preliminary Services with respect to the Work prior to the date of execution of this Agreement by the Parties and agree, that to the extent such preliminary Services have been performed, that all such services previously

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performed are deemed to be Services as defined herein and to be provided in accordance herewith, and are included in the Contract Sum.⁶

12. OWNER'S RESPONSIBILITIES

12.1 Owner shall be responsible for providing Developer with access to Owner's personnel as and when reasonably necessary and upon reasonable prior written for Developer to complete interconnection of the System with the existing electrical service(s) and/or Utility.

12.2 Owner shall visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work. Neither Owner's visits nor its review of Work or Services shall excuse or relieve Developer for proper performance of the Services or Work in accordance with the Contract Documents.

13. CONTRACT SUM; PAYMENTS ON ACCOUNT OF CONTRACT SUM

13.1 The total cost for the Work is \$[TBD] (the "Contract Sum"), which is a firm fixed price for the Scope of Work that includes all amounts due to Developer for the proper performance and completion of the Work, including without limitation all amounts due on account of Subcontractors and Major Equipment Suppliers, all insurance premiums, Utility shut down fees, all overhead and profit, reimbursable expenses, general conditions, contingencies, taxes, and other costs of work. The Contract Sum only is subject to additions, deletions and/or changes in the Scope of Work for the Work made in accordance with Change Orders entered into by mutual agreement of the Parties.

13.2 Developer shall submit payment applications on account of Services and Work performed upon completion of the milestones set forth in **Schedule #6** of this Agreement. Owner's billing contact information is: [name; address; email address; phone number; billing portal site information]. All undisputed amounts to be paid to either Party under this Agreement shall be (a) paid in dollars, electronically in immediately available funds; and (b) due within thirty (30) days after the paying

⁶Note: has any work commenced? If not, please propose a notice to proceed provision.

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Party's receipt of the other Party's invoice or, if such date is not a Business Day, on the immediately succeeding Business Day, to such account as may be designated by such Party from time to time by no less than five Business Days' written notice to the other Party.

13.3 In addition to the original Contract Sum as stated in Section 13.1 above and payments in respect thereof as provided in Section 13.2, Developer shall invoice Owner for any and all extra costs incurred pursuant to or as a result of any Change Orders on a monthly basis in the month following the performance of any such Services or Work authorized thereunder. Owner shall remit payment to Developer on account of such undisputed amounts within thirty (30) Days; provided, however that Owner may not withhold any sums due to Developer except in accordance with Section 13.5.

13.4 Except as otherwise provided in this Agreement, where Owner has failed to remit any undisputed payment when due to Developer, following Developer's written notice thereof and Owner's failure to cure such payment within three (3) Days of receipt such notice, such delinquent amounts shall accrue interest at the rate of 1.5 percent (1.5%) per month, from the expiration of such three (3) Day period. In addition, in the event that Owner shall fail to make any undisputed payments as and when due under this Agreement, and subject to Developer having given Owner written notice of late payment and where such payment breach continues following thirty (30) days from Developer giving such notice to Owner, Developer may issue written notice to Owner, in its sole and absolute discretion, of (a) a suspension of its performance under this Agreement until such late payment(s) are received, or (b) termination of this Agreement in accordance with Section 18. Any such suspension or termination by Developer in accordance with this Section shall not abridge or limit any claim by Developer for any and all damages to the extent provided under this Agreement or otherwise available to it under applicable Legal Requirements.

13.5 Owner may withhold from all or any portion of any payment to Developer, or deduct from the Contract Sum, as Owner deems necessary and subject to Owner's prior written notice to Developer setting forth the basis for any such withholding asserted in Owner's reasonable judgment, to protect Owner from loss due

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to (i) Defective Work which has not been remedied in accordance with Section 19; (ii) claims filed by third parties (including the assertion, filing or recording of any lien, security interest, or other encumbrance) filed against Owner or Owner's property on account of Work or Services for which Owner has remitted payments to the extent payable under this Agreement; (iii) failure of Developer to make payments properly to Subcontractors or Major Equipment Suppliers in accordance with Section 4.6; (iv) reasonable evidence that the remaining Scope of Work cannot be completed for the unpaid balance of the Contract Sum; (v) damage to Owner or another contractor resulting from acts or omissions of Developer or its Subcontractors; (vi) reasonable evidence that the Work, or portions thereof, will not be completed within the Project Schedule [and that the unpaid balance would not be adequate to cover actual or Delay Liquidated Damages for the anticipated delay]; (vii) failure to comply with any material provision of this Agreement, including timely payment of all Liquidated Damages; (viii) costs and expenses incurred by Owner attributable to actions taken to prevent damage, injury or loss in case of emergency, caused by the fault, negligence, act or omission of Developer or its Subcontractors; or (ix) the occurrence and continuation of a Developer Event of Default.

13.6 Notwithstanding the foregoing, if any mechanic's liens or other claims are filed or maintained against Owner's buildings or improvements or real estate appurtenant thereto, for or on account of any Services or Work or furtherance of the Work, then so long as Owner has paid all undisputed amounts to Developer hereunder it shall be the obligation of Developer to make provisions satisfactory to Owner for the satisfaction of such liens of claims before Owner makes any payment hereunder; provided, however, that in no event may Owner withhold from any payment due to Developer an amount which is more than 150% of the amount stated in any such mechanic's lien(s). Notwithstanding the foregoing, Developer shall cause any such liens to be satisfied or discharged by bond, at Developer's sole expense, within thirty (30) Days of the filing of such liens, provided that Owner has paid Developer all amounts as are due and payable pursuant to the terms of this Agreement, including any and all amounts which had been withheld by Owner as provided herein.

13.7 The sums paid under this Agreement shall be deemed to be in full consideration for the performance by Developer of all its duties and obligations under

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the Contract Documents and Developer shall have the responsibility to install the materials and supplies purchased in accordance with the provisions of the Contract Documents. Prior to Substantial Completion, Developer shall protect the Work, maintain it in proper condition and to forthwith repair, replace and make good any damage thereto without cost to Owner, except as provided to the contrary by this Agreement, including to the extent such loss is covered under property insurance required by Owner pursuant hereto.

13.8 Notwithstanding anything herein to the contrary, in the event and to the extent that any portion of the Contract Sum is to be paid by the Utility or by sums due from the Utility or any Governmental Authority or public benefit corporation, then Owner hereby designates that such payment be made to, and/or is hereby assigned to Developer, and Developer is hereby authorized to execute any and all applications, notices or submissions in order to effectuate same. The Parties acknowledge that the power conferred on Developer is coupled with an interest.

14. OWNER'S REPRESENTATIVE

Owner may designate a representative who shall have full power and authority to perform Owner's obligations, to give Owner's approval, and to bind Owner under this Agreement (the "Owner's Representative").

15. CLAIMS; CHANGE(S) TO SCOPE OF WORK OR PROJECT SCHEDULE

15.1 Any and all agreements for changes in the Scope of Work between Developer and Owner shall only be effective if by written Change Order. The Contract Sum shall be adjusted to reflect any agreed-upon changes in the Scope of Work as set forth in approved Change Orders, and the effect of any Change Order on the Contract Sum and/or Project Schedule shall be indicated in writing therein. If the Parties cannot agree on an equitable adjustment of the Contract Sum in relation to a proposed Change Order, then Developer shall be entitled to an adjustment to the Contract Sum calculated by reference to the Developer's reasonable and substantiated costs incurred as a result of such Change Order plus a markup of ten percent (10%) on such costs. Owner shall endeavor to review and approve any changes to the design or other changes requiring changes to the Construction Documents within five (5) Days after

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any submission of any proposed changes to Owner. If physical changes to the Site are necessary in order to accommodate proposed changes in the Work proposed by Owner, not otherwise contemplated by the Contract Documents, the Scope of Work or reasonably foreseeable by Developer, Owner shall be solely responsible for the substantiated costs of effectuating such physical changes.

15.2 Notwithstanding anything herein to the contrary, where the Parties are unable to agree on a Change Order, Owner may direct Developer to implement a change in Work or Services that is generally consistent with the Scope of Work, in which event Developer shall proceed with such change and Developer shall be entitled to reimbursement in accordance with the procedures set forth in Section 15.1 for any additional costs and expenses incurred in connection with such change in Work or Services, as applicable, and any other changes if not agreed to by the Parties shall be subject to the dispute resolution provisions set forth in Section 20.

15.3 Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except the obligation to pay money in a timely manner for services actually performed or other liabilities actually incurred, if and to the extent that its failure of, or delay in, performance is due to a Force Majeure Event provided that (i) such Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as reasonably practicable and in any event within five (5) Days after knowledge of the occurrence of such Force Majeure Event; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (iii) no obligations of such Party that arose before the occurrence causing the suspension of performance shall be excused as a result of the occurrence; (iv) such Party uses commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and (v) when such Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder. For the avoidance of doubt, the Parties agree that that COVID-19 virus shall not constitute a Force Majeure Event unless, and only to the extent that, it constitutes a COVID-19 Event. For the purposes of this Section 15.3, a “**COVID-19 Event**” shall mean and be limited to new circumstances relating to the COVID-19 virus that first occur after

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the Effective Date (including any new mutation or variation of the COVID-19 virus) which result in the disruption or unavailability of or material increase in price in labor or materials required for the performance of the affected Party's obligations hereunder and such disruption (i) actually impacts the time limits or dates for performance of a Party's obligations hereunder and/or the Contract Sum; and (ii) cannot be avoided or mitigated by reasonable actions taken by the affected Party.

16. SYSTEM PERFORMANCE AND OPERATION

16.1 The actual output from the System will vary based on climatic, weather, and other Site-specific conditions. Owner acknowledges that the actual performance of System will be dependent on local weather conditions and variations in insolation levels and other Site-specific conditions. Notwithstanding, this Section 16.1, Developer will pay Capacity Liquidated Damages (Solar System) and Capability Liquidated Damages (BESS) in respect of any shortfall in, respectively, Guaranteed Solar System Capacity and Guaranteed BESS Capabilities, in accordance with Section 16.2

16.2 Developer may declare that it has achieved Substantial Completion if, with respect to both the Solar System and the BESS:

16.2.1 The Solar System achieves less than the Planned Nameplate Capacity in the Capacity Test, but in no case less than ninety-five percent (95%) of the Planned Nameplate Capacity (such ninety-five percent (95%) capacity, the "Guaranteed Solar System Capacity"), by paying Buyer the Capacity Liquidated Damages (Solar System). In the event that the Solar System's actual capacity achieved in the Capacity Test is less than the Guaranteed Solar System Capacity, then Developer shall not be entitled to declare Substantial Completion and Developer shall, at Developer's sole cost and expense, promptly rectify any such deficiencies so that the capacity of the Solar System achieved in the Capacity Test at least meets or exceeds the Guaranteed Solar System Capacity (and to the extent, after such repairs, the capacity of the Solar System achieved in a subsequent Capacity Test is less than the Planned Nameplate Capacity but greater than the Guaranteed Solar System Capacity, pay Owner the Capacity Liquidated Damages (Solar). As used herein, the "Capacity Liquidated Damages (Solar)" shall be product of (i) the difference between

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97% of the Planned Nameplate Capacity of the System and the actual Solar System capacity achieved in the Capacity Test (but in no case less than 95% of the Planned Nameplate Capacity) and (ii) an amount equal to the Contract Sum, divided by the Planned Nameplate Capacity as expressed in kWac,

, and

16.2.2 The BESS achieves less than [] in the Capacity Test, but in no case less than [], the “Guaranteed BESS Capabilities”), by paying Buyer the Capacity Liquidated Damages. In the event that the BESS’s actual capabilities achieved in the Capacity Test are less than the Guaranteed BESS Capabilities, then Developer shall not be entitled to declare Substantial Completion and Developer shall, at Developer’s sole cost and expense, promptly rectify any such deficiencies so that the capabilities of the BESS achieved in the Capacity Test at least meets or exceeds the Guaranteed BESS Capabilities (and to the extent, after such repairs, the capabilities of the BESS achieved in a subsequent Capacity Test is less than the [] but greater than the Guaranteed BESS Capabilities, pay Owner the Capability Liquidated Damages (BESS). As used herein, the “Capacity Liquidated Damages (Solar)” shall be product of (i) the difference between [] and the actual BESS capabilities achieved in the Capacity Test (but in no case less than []) and (ii) an amount equal to the Contract Sum, divided by [] as expressed in kWac.

16.3 Developer and Owner each acknowledge that they have discussed and reviewed the nature and extent of the damages that Owner is likely to incur in the event that Planned Nameplate Capacity or the BESS Capabilities are not each achieved, and based on the foregoing acknowledge and agree that the Capacity Liquidated Damages (Solar System) and Capability Liquidated Damages (BESS) established in this Section 16.2 are based upon a reasonable approximation of Owner’s damages in such event, constitute agreed and liquidated damages, and are not a penalty.

16.4 After Final Completion, it is Owner’s responsibility to carry out (or cause to be carried out through Owner’s procurement from Developer or its affiliate of an operations and maintenance agreement) all maintenance procedures described

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in the System Operation & Maintenance Manual. Failure to operate or maintain the System as described in the System Operation & Maintenance Manual may void the Warranty expressly provided hereunder.

17. HAZARDOUS MATERIALS

17.1 The term “**Hazardous Materials**” includes, but is not limited to, asbestos and PCBs discovered in or on the premises. Developer acknowledges and agrees that, as between the Developer and Owner, Developer is solely responsible for any and all Hazardous Materials which are or may be located in or on the Site or any related premises before commencement of the Work and which were not brought to the Site by Owner.

17.2 Developer represents and warrants that, to the best of Developer’s knowledge, except as otherwise expressly set forth in this Agreement, there are no Hazardous Materials in or on the premises or Site which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by Developer pursuant to the Contract Documents or operation and maintenance of the System after the Final Completion date. Should Developer become aware of or suspect the presence of Hazardous Materials during performance of its Scope of Work, Developer shall provide Owner with immediate notice of the conditions discovered and of Developer’s suspension in such affected areas.

17.3 Owner will not be responsible for any claims, damages, costs, or expenses of any kind associated with Developer’s suspension of Work as a result of Hazardous Materials.. As between Owner and Developer, Developer will be solely responsible for taking, and the cost of, all necessary steps to correct, abate, clean up or control Hazardous Materials in accordance with all applicable statutes, rules, regulations or orders of any authority having jurisdiction over the area, condition or Hazardous Materials.

17.4 Except for any damages or injuries arising from or related to the negligent or willful act or omission of Owner, Developer shall indemnify and hold Owner, its officers, directors, shareholders, agents and employees harmless from and against any and all claims, demands, damages or causes of action and associated costs

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(including Owner's attorneys' fees) in any way arising out of the presence, suspected presence or release of any Hazardous Materials into the air, soil, or any water system or water course, or in connection with any actions taken in connection with respect thereto, or with respect to any actions or proceedings in connection therewith, including but not limited to any action to enforce this indemnity. The foregoing indemnity will continue after the Final Completion date and survive termination of this Agreement.

18. TERMINATION OF THIS AGREEMENT

18.1 Developer may terminate this Agreement, upon [fifteen] ([15]) Business Days' prior written notice to Owner, where Owner has failed to remit payments as and when due under this Agreement in accordance with Section 13.4 or has otherwise breached any material provision of this Agreement, and Owner has failed to cure such default within [fifteen] ([15]) Business Days of Developer providing written notice thereof. If this Agreement is terminated by Developer pursuant to this Section 18.1, (i) Developer shall be entitled to recover from Owner payment for Services and Work properly executed and Major Equipment (and any other Equipment) theretofore purchased by Developer plus all expenses actually incurred by or charged to Developer attributable to such termination (including but not limited to any termination or demobilization charges or expenses actually charged to Developer by its Subcontractors) and (ii) Developer shall not be liable to Owner for any of the Work or Services performed (or not performed) by any person on and after the date of such termination. Owner will not be responsible for reimbursing Developer for any continuing contractual commitments to Subcontractors or materialmen or penalties or damages for cancelling such contractual commitments, and no compensation shall be allowed to Developer or its Subcontractors for anticipated profit or overhead, unperformed services or intangibles.

18.2 Owner may terminate this Agreement for cause if (i) Developer is negligent or commits material errors, omissions or breaches of this Agreement and fails to cure such errors, omissions or breaches within fifteen (15) Business Days' of Owner providing written notice thereof; (ii) Developer is or becomes insolvent or bankrupt or otherwise unable to pay debts as they become due; (iii) Developer fails to make any undisputed payments to Subcontractors or Major Equipment Suppliers

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when due in accordance with the terms of all contracts with such Subcontractors or Major Equipment Suppliers; (iv) Developer, without cause, abandons the Work; (v) any of the Developer's representations or warranties provided hereunder are untrue or misleading in any material respect; (vi) Developer fails to achieve Substantial Completion by the date upon which Developer's liability for Delay Liquidated Damages meets or exceeds the limitation thereon set forth in Sections 6.5 and 19.5 and such delay is continuing; (vii) Developer's aggregate liability for Capacity Liquidated Damages meets or exceeds the limitation thereon set forth in Sections 16 and 19.5; (viii) Developer's aggregate liability for damages under this Agreement equals or exceeds the limitation of liability set forth in Section 19.5 and the Parties do not mutually agree to increase such limitation of liability; (viii) any lien is placed upon the Work, Site, Equipment or System in violation of this Agreement which is then not removed by Developer within ten (10) Days of Developer's receipt of notice by Owner of the existence of such lien; or (ix) Developer fails to maintain insurance as required by Section 3.7 (each a "**Developer Event of Default**"). Upon the occurrence and during the continuation of a Developer Event of Default, Owner shall have the following rights and remedies and may elect to pursue any or all of them, as well as any other remedies available at law or at equity: (a) Owner may terminate this Agreement by giving notice of such termination to Developer; (b) Owner may seek equitable relief to cause Developer to take action, or to refrain from taking action pursuant to this Agreement; (c) Owner may, without terminating this Agreement, take over some or all of the Work from Developer and perform such Work itself. If Owner elects to perform some or all of the Work itself, Developer shall cooperate with Owner. Owner may employ any other party to perform the Work by whatever method Owner may deem expedient, and may undertake such expenditures as in Owner's sole and reasonable judgment will best accomplish the timely completion of the Work (including, where necessary, the entry into contracts without prior solicitation of proposals). Developer shall not be entitled to receive any further payments under this Agreement until completion of the Work by Owner and shall Owner shall deduct the cost of completing the Work from the Contract Sum and payments on account thereof. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to Developer; (c) Owner may pursue the dispute resolution procedures set forth in Section 20 to enforce the provisions of this Agreement and to seek actual damages subject to the limitations of liability set out in this Agreement;

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and (d) Developer shall provide to Owner (x) all of the lien waivers required under Section 4.5, to the extent of payments made by Owner and (y) promptly make available upon Owner's written request, true and correct copies of all books, records, tax returns and other documents to the extent pertaining to Developer's performance of the Work on the System.

18.3 Owner may terminate this Agreement at any time for Owner's convenience on fifteen (15) Days' prior written notice to Developer. Upon such termination Developer shall be entitled to an amount equal to (i) the sum of (a) the actual costs incurred by Developer for the Work performed prior to such termination, plus (b) ten percent (10%) of the amount of clause (a) for profit and overhead, plus (c) cancellation charges necessarily incurred by Developer in relation to its Subcontractors, plus (d) documented reasonably incurred actual costs of demobilization, less (ii) amounts previously paid to Developer.⁷

18.4 Notwithstanding anything to the contrary, Owner has and shall have no right to terminate this Agreement except in accordance with the terms of this Agreement.

19. WARRANTIES; LIMITATIONS ON LIABILITY

19.1 Developer warrants and guarantees to Owner that all Work and Equipment furnished, installed or otherwise performed by Developer or any of its Subcontractors hereunder shall (i) be free from defects or deficiencies in workmanship, materials, manufacture, fabrication and installation; (ii) be unused and undamaged and of good and suitable quality and condition when installed; (iii) be designed and constructed for use under the climactic and normal operating conditions described in the Contract Documents in accordance with Prudent Industry Practices; and (iv) conform to the requirements of the Scope of Work, this Agreement and the other Contract Documents, Legal Requirements, all manufacturers' specifications, the requirements of any insurers providing insurance under this Agreement and Prudent Industry Practices (together, the "**Warranty**"). Any Work or Equipment not conforming to the Warranty shall be considered "**Defective**" or a "**Defect**". Developer

⁷ **Note:** parties to discuss terms for transferring the project to PSE if termination under this section occurs prior to Mechanical Completion. Scope of property rights involved with this project will help inform that.

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shall remedy any Defect occurring within the (2) year period following Final Completion (the “**Warranty Period**”). The Warranty shall apply to all repairs and replacements carried out by Developer from the date they were completed until the later of (a) the expiration of the Warranty Period; and (b) one year from the date of completion of such repair or replacement. Developer shall pay all costs incurred by Developer in performing such corrective services. If Developer cannot or does not correct any Defect within a reasonable time after written notice of such Defect is received by Developer, or if an emergency exists rendering it impossible or impracticable for Owner to have the corrective work performed by Developer, then Owner, after written notice to Developer, may make or cause to be made such correction, in which case Developer will reimburse the Owner for the substantiated costs thereof.

19.2 The Warranty shall not apply to any Defect caused by improper use or care by Owner. Without limiting the foregoing, and without expanding Developer’s obligations hereunder, Developer shall not be obligated to furnish service under the Warranty to repair or service damage:

- (i) resulting from attempts by personnel other than Developer and/or Subcontractor’s representatives to install, repair or service the covered materials and Equipment;
- (ii) resulting from improper use or connection to incompatible equipment, physical abuse, damage by accident or neglect, of any covered materials or Equipment by the end user or any third party (other than Developer or its Subcontractors);
- (iii) due to malfunction caused by the use of unauthorized or improper parts or supplies except as caused by Developer and/or its Subcontractors; or
- (iv) caused by the modification or integration of materials or Equipment purchased by Owner pursuant to this Agreement with other products when the effect of such modification or integration increases the time or difficulty of repairing or servicing the covered materials or equipment, except as caused by Developer and/or its Subcontractors.

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19.3 NEITHER PARTY SHALL BE ENTITLED TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF PROFITS (EXCEPT FOR DEVELOPER'S PROFITS ON WORK ACTUALLY PERFORMED UNDER THIS AGREEMENT TO THE EXTENT INCLUDED IN THE CONTRACT SUM), INTEREST OR PRODUCT OR BUSINESS INTERRUPTION, HOWEVER THE SAME MAY BE CAUSED; PROVIDED THAT SUCH LIMITATION SHALL NOT APPLY TO LIABILITY OR DAMAGES (A) ASSERTED OR RECOVERABLE BY THIRD PARTIES FOR WHICH EITHER PARTY OWES AN OBLIGATION OF INDEMNITY PURSUANT TO THIS AGREEMENT OR AT LAW (EVEN IF SUCH THIRD PARTY CLAIM SEEKS DAMAGES OF THE TYPE IDENTIFIED IN THE FIRST SENTENCE OF THIS SECTION ABOVE), OR (B) THAT ARE RECOVERABLE FROM ANY INSURANCE COVERING DEVELOPER, THE WORK, THE SYSTEM OR THE ACTS OR OMISSIONS OF DEVELOPER AND/OR ITS SUBCONTRACTORS OR THAT WOULD HAVE BEEN RECEIVED BY DEVELOPER IF DEVELOPER HAD PROCURED AND MAINTAINED THE INSURANCE REQUIRED BY SECTION 3.7, OR (C) RELATED TO A PARTY'S VIOLATION OF LAW, FRAUD OR WILLFUL MISCONDUCT. MOREOVER, DEVELOPER AGREES THAT THE LIMITATION ON CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES IN THIS SECTION 19.3 IS NOT INTENDED TO PREVENT, AND SHALL NOT PRECLUDE, OWNER'S RECOVERY OF LIQUIDATED DAMAGES PURSUANT TO THIS AGREEMENT (WHICH LIQUIDATED DAMAGES SHALL BE SUBJECT TO THE SEPARATE LIMITATIONS SET FORTH HEREIN AS APPLICABLE). FOR THE AVOIDANCE OF DOUBT, THE TERMS "CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES" UNDER THIS SECTION 19.3 SHALL NOT INCLUDE THE COSTS TO REPAIR, CORRECT OR REPAIR DEFECTIVE WORK, OR THE COSTS TO REPAIR, CORRECT OR REPLACE OTHER PROPERTY THAT IS PHYSICALLY DAMAGED AS A RESULT OF DEFECTIVE WORK.

19.4 NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE WORK, THE SYSTEM, THE PROJECT, THIS AGREEMENT OR THE OTHER CONTRACT DOCUMENTS (WHETHER

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BASED IN CONTRACT, TORT OR OTHERWISE), SHALL EXCEED AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE CONTRACT SUM, AS IT MAY BE ADJUSTED. NOTWITHSTANDING THE FOREGOING, SUCH LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (A) ANY CLAIM ARISING OUT OF A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD; (B) INDEMNITY OBLIGATIONS OF EITHER PARTY UNDER THIS AGREEMENT WITH RESPECT TO THIRD-PARTY CLAIMS; OR (C) FAILURE TO MAINTAIN REQUIRED INSURANCE OR DAMAGES FOR WHICH INSURANCE PROCEEDS ARE RECEIVED UNDER ANY INSURANCE POLICY REQUIRED TO BE OBTAINED BY A PARTY (OR ANY OF ITS SUBCONTRACTORS) UNDER THIS AGREEMENT.

19.5 DEVELOPER'S AGGREGATE COMBINED CAP FOR ALL LIQUIDATED DAMAGES WHICH MAY ARISE UNDER THIS AGREEMENT SHALL NOT EXCEED [] OF THE CONTRACT SUM, AS IT MAY BE ADJUSTED.

19.6 **DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED HEREIN AND WITHOUT LIMITING OWNER'S OTHER RIGHTS UNDER THIS AGREEMENT INCLUDING IN RESPECT OF SECTION 21, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY OR ALL SERVICES, MATERIALS AND EQUIPMENT SUPPLIED AND/OR INSTALLED BY DEVELOPER WHICH FAILS TO SATISFY THE WARRANTY. THE REMEDIES PROVIDED FOR IN SECTION 19.1 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE WARRANTY DURING THE WARRANTY PERIOD SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR OWNER AS A RESULT OF SUCH FAILURE.

20. DISPUTE RESOLUTION; CHOICE OF LAW; VENUE

20.1 In the event of any dispute arising under or in connection with this Agreement, or any of the Contract Documents or any Services or Work performed or not performed hereunder, the Parties agree to attempt to resolve such dispute(s) as

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follows: by a meeting of Developer, Owner and any necessary Subcontractor(s), such meeting to be held within three (3) days after the written demand for any such meeting by any Party, and such meeting shall be held at a time and location selected by the party receiving such notice and shall be attended by the principal(s) of each Party.

20.2 Unless otherwise provided herein, or as the Parties (or their counsel) may otherwise agree in writing, Developer may continue the Services and Work during the pendency of any dispute. If Developer continues to perform in a satisfactory manner, Owner shall continue to make payments on account of all Services and Work not in dispute during such dispute resolution proceedings in accordance with this Agreement (or as the Parties may otherwise agree in writing). Notwithstanding the foregoing, Developer shall be under no duty or obligation to perform under this Agreement if Owner has purported to terminate the entire Agreement or disputes Developer's ability or willingness to continue to perform under this Agreement.

20.3 The validity, interpretation, and performance of this Agreement, and each of its provisions, and all matters, including torts, arising under this Agreement, will be governed by the laws of the state of Washington, without reference to any conflicts of law provisions that would require the application of the laws of another state. The Parties agree that the state and federal courts, as applicable, of the state of Washington will have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties consent to such jurisdiction and venue and, to the fullest extent allowed by Legal Requirements, waive any objection to this jurisdiction or venue. The invalidity or unenforceability of one or more provisions will not affect validity or enforceability of any other provision or of this Agreement as a whole.

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21. INSURANCE; INDEMNITY

21.1 Developer shall at all times during the performance of the Services and Work and the duration of this Agreement provide and comply with the minimum insurance coverages as provided in Section 3.7.

21.2 Owner shall at all times during the performance of the Services and Work and the duration of this Agreement provide and comply with the minimum insurance coverages as provided in Section **Error! Reference source not found.**

21.3 Mutual Indemnity. To the fullest extent permitted by law, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives ("**Indemnitees**") from and against any and all from liability to third parties arising due to claims, demands, suits, proceeding, action, causes of action, losses, expenses, damages, fines, penalties, court costs and reasonable attorneys' fees (collectively, "**Losses**") arising from (i) third party claims for property damage, personal injury or bodily injury or death to the extent caused by breach of this Agreement or any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of the Indemnifying Party, any of its affiliates, or anyone directly or indirectly employed by any of them or from the failure of the Indemnifying Party to comply with any Legal Requirements; (ii) all fines, penalties or assessments issued by any Governmental Authority that arise out of or result from the Indemnifying Party's, its Subcontractor's or anyone directly or indirectly employed by any of them, failure to comply with any Legal Requirements or Governmental Approvals; (iii) claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of the Indemnifying Party to pay, as and when due, all taxes, fees or charges of any kind imposed by any Governmental Authority which the Indemnifying Party is obligated to pay; and where Developer is the Indemnifying Party, (iv) claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanics lien, filed by Developer or any of its Subcontractors or other persons performing any portion of the Work; and (v) employers' liability or workers' compensation claims filed by any employees or agents of Developer, its affiliates or Subcontractors, (any of the foregoing, collectively "**Claims**"). This indemnification,

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defense and hold harmless obligation shall not be limited by insurance coverages and shall survive the termination or expiration of this Agreement.

21.4 Each Party shall notify the other Party of any Claims or threatened Claims in respect of which it is or may be entitled to indemnification under this Section 21. Such Notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Claims or threatened Claims.

22. NOTICE

22.1 Any notices or approvals to be given pursuant to the terms and provisions of the Agreement shall be in writing, provided that meeting minutes shall not constitute notice. Notices required pursuant to this Agreement shall be sufficient if delivered personally, by facsimile, by email, or by registered or certified mail, return receipt requested, to Owner or Developer to their respective addresses set forth in **Schedule #5**.

22.2 Such notices or approvals shall be deemed to have been served and given when e-mailed, hand-delivered, faxed or when delivered by courier service; or, if mailed, three (3) calendar days after the date same is deposited by either registered or certified mail, postage prepaid, in a branch of the United States Post Office, addressed to such Parties as provided above.

22.3 Either Party may designate, by notice given in the manner provided for herein, a different person and/or address for the mailing of notices to it. In the event any notice under this Section is to be sent to the attention of more than one person at such address, the requirements of this Section shall only be deemed satisfied if copies of the notice are sent separately to all persons listed.

23. CONFIDENTIALITY

23.1 General. Except as required under Legal Requirements, each Party shall hold in confidence all documents and other information, whether technical or commercial, relating to this Agreement or the design, financing, construction, ownership, operation or maintenance of the System that is of a confidential nature and that is supplied to it by or on behalf of the other Party ("Confidential Information")

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for two (2) years after Final Completion. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be required by it, its professional advisers, or potential or actual financing parties or investors, or potential or actual subcontractors to perform its obligations or to assert its rights under this Agreement). Each Party further agrees to require its subcontractors, vendors, contractors and employees to enter into appropriate nondisclosure agreements relative to such Confidential Information prior to the receipt thereof or to ensure that such third parties otherwise owe similar obligations of confidentiality. Notwithstanding any provision hereof to the contrary, to the extent reasonably required, Confidential Information may be made available to potential debt and equity investors and their respective advisors as necessary subject to a mutually acceptable confidentiality agreement.

23.2 Notwithstanding anything to the contrary in this Section 21, PSE shall be entitled to disclose to any governmental authority (including, without limitation, the Washington Utilities and Transportation Commission and the Federal Energy Regulatory Commission) as a matter of right: (a) without seeking any confidential treatment therefor, Developer's name, the type, nature and general description of the Agreement's terms, and amount and type of work and services under contract pursuant to this Agreement, and (b) the full terms and conditions of this Agreement and any other confidential information of either Party hereunder to a governmental authority, provided that PSE requests confidential treatment therefor.

23.3 Exceptions. The provisions of this Section 23 shall not apply to information within any one of the following categories or any combination thereof:

23.3.1 information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's wrongful act;

23.3.2 information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party and not otherwise subject to an obligation of confidentiality; or

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23.3.3 information received by a Party from a third party having no obligation of confidentiality with respect thereof.

23.4 Notwithstanding anything to contrary set forth herein, each Party acknowledges that the other Party is or may become a publicly-held company (a “**Public Party**”), and in conjunction with its duties as a publicly-held company, such Public Party may from time to time be required to report to the public, through press releases or filings with a Governmental Authority, the signing of contracts and agreements or other such activities. To the extent consistent with Legal Requirements, the Public Party shall give the other Party advance notice and an opportunity to review and provide comment on such releases or filings. On the Public Party’s request, the other Party shall: (i) provide a written description of information about such Party as it should appear in such press releases or filings; or (ii) provide written notice that such Party does not want its name to appear in all or certain press releases or filings, with which the Public Party shall comply to the extent permitted under Legal Requirements.

24. LABOR.

24.1 It is PSE’s preference for Developer to utilize a Project Labor Agreement, Community Workforce Agreement, or Collective Bargaining Agreement for major construction activities associated with the construction of the Project that is in a reasonable and customary form. Developer shall also make commercially reasonable efforts to ensure that such Project Labor Agreement, Community Workforce Agreement, or Collective Bargaining Agreement major construction activities associated with the construction of the System is eligible to be certified by the Washington State Department of Labor and Industries.

24.2 Developer and its Subcontractors shall use commercially reasonable efforts to use apprenticeship labor.

25. EQUITY REPORTING REQUIREMENT.

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25.1 Developer shall furnish no later 30 days after the Effective Date a report documenting how it has executed its obligations under this Agreement in accordance with the Developer's CETA Equity Plan and an update of such report no later than 30 days after Substantial Completion. "CETA Equity Plan" shall mean that portion of Developer's proposal to PSE's 2023 Distributed Solar and Storage RFP for the System comprising the "CETA Equity Plan" section of "Tab 2a Commercial Details" of the Exhibit B Bid Forms and related supplemental materials, including updates provided by Developer during the request-for-proposal evaluation process following the filing of PSE's final CEIP. PSE shall have the right to review and provide feedback (if any) on the reports required under this Section 25.1. This report must include at a minimum the application of the labor standards in RCW 82.08.962 and 82.12.962 and compliance with WAC 480-107-075; local tax revenues generated by the System; land use payments associated with the System; host community payments for those municipalities or other local administrative divisions that host the System; activities undertaken to support development of project-related opportunities, including opportunities for women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits discussed in Developer's CETA Equity Plan. The report must also describe and document how Developer as implemented commitments it has made it in its CETA Equity Plan and explain any material variation from those commitments.

25.2 The report required pursuant to Section 21.1 also must include, at a minimum, the reporting of metrics associated with the customer benefit indicator "increase in quality and quantity of clean energy jobs" in PSE's 2021 Clean Energy Implementation Plan ("CEIP"). The metrics provided must include, at a minimum, the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers, and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics may change based on the results of PSE's 2023 Biennial CEIP and subsequent CEIPs, at which time

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PSE will inform Developer, and Developer shall reasonably cooperate to revise indicators and metrics as necessary.

25.3 Throughout the term of this Agreement, Developer will continue to conduct stakeholder and community engagement to inform the public about activities being undertaken by Developer related to the System and gain community and stakeholder input on how these activities can benefit or how burdens can be reduced in these communities; such activities should be, but are not limited to: early contact with county officials and community leaders, town halls to discuss the project in an open forum, a website to provide relevant updates, a news release in the local paper detailing economic benefits and ads placed that include Developer contact information, and special attention should be paid to inform neighbors of the System. Any homes within 300 feet of the System footprint should be informed through either door knocks, mailings or other direct communications.

25.4 Developer will provide updates to PSE on stakeholder and community engagement activities undertaken to support the System, along with feedback provided by communities and other stakeholders, Developer's reasonable attempts to address this feedback, and plans for future engagement activities. Developer will provide these updates on a semi-annual basis until the commercial operation of the System has been achieved, and following commercial operation upon PSE's reasonable request, and not more than once annually by April 1.

25.5 In its reporting and updates described in this Section 21, Developer will use its best efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities and Vulnerable Populations as they are defined in WAC 480-100-605 and according to the criteria in PSE's CEIP. Developer will keep PSE informed as these criteria are finalized and further refined, and PSE will provide feedback and guidance to Developer on the methodology Developer uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Developer will use its best efforts to present metrics, benefits and burdens based on disadvantaged communities defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.

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26. MISCELLANEOUS; ENTIRE AGREEMENT; AMENDMENTS

26.1 This Agreement supersedes any and all agreements, either oral or written, between the Parties and contains all the covenants and agreements between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

26.2 No modification of this Agreement or other Contract Documents will be effective unless it is in writing signed by both Parties. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

26.3 Owner agrees to allow Developer to publicly announce Developer's participation in the Work and to reference the System for the purposes of expanding the adoption of similar technologies to the System to Developer's prospective clients, subject to review and approval of any such announcement or publication by Owner in its sole discretion.

26.4 Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person other than the Parties hereto.

26.5 The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or

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unenforceable, the Parties shall promptly renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

26.6 This Agreement shall be binding upon and shall inure to the benefit of the Parties, their heirs, executors, administrators, representatives, successors and assigns. Neither Party may assign this Agreement, nor any obligations hereunder, other than as expressly provided in this Agreement, without prior written consent of the other Party.

26.7 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this document by facsimile or other generally accepted electronic means (*i.e.* e-mail) shall be effective as delivery of a manually executed counterpart of this document.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

Developer

[_____]

Owner

PUGET SOUND ENERGY, INC.

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

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SCHEDULE #1

LIST OF MAJOR EQUIPMENT

| Major Equipment | Description | Units |
|------------------------------|--------------------|--------------|
| [Solar Photovoltaic Modules] | [TBD] | [TBD] |
| [String Inverters] | [TBD] | [TBD] |
| [BESS Equipment] | [TBD] | [TBD] |
| [TBD] | [TBD] | [TBD] |
| [TBD] | [TBD] | [TBD] |
| [TBD] | [TBD] | [TBD] |
| [TBD] | [TBD] | [TBD] |

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SCHEDULE #2

SCOPE OF WORK

Solar System

Solar System Description and Location:

Solar System Size:

Planned Nameplate Capacity of [●] kW, limited to the Interconnection Limit at the Point of Interconnection.

Point of Interconnection:

Interconnection Limit: [●] kW

Solar Photovoltaic Panels:

Orientation: Fixed Tilt Tracking

Inverters: 1-Phase 3-Phase

Solar System Metering Point:

BESS

BESS Description and Location:

BESS Equipment (model, chemistry, etc.):

BESS Metering Point:

BESS Capabilities:

Energy Management System SCADA Protocol (DNP or Modbus):

Energy Management System SCADA Tags:

Storage Capacity (maximum capability of the BESS to discharge electric energy:

Effective Storage Capacity (maximum dependable operating capacity of the BESS to discharge energy for four (4) hours of continuous discharge):

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Cycles (maximum annual number of equivalent charge/discharge cycles of the BESS):

Depth of Charge (level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage):

Rate of Charge (rate that the BESS can be charged with energy):

Round Trip Efficiency (ratio, expressed as a percentage, of energy charged (in MWh) to energy discharged from the BESS (in MWh and including for Auxiliary Load):

Auxiliary Load (energy produced or discharged by the BESS that is used to power the BESS or to serve load that is necessary for operation of the BESS and its enclosure:

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SCHEDULE #3

PROJECT SCHEDULE

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SCHEDULE #4

MECHANICAL COMPLETION AND FINAL COMPLETION DOCUMENTS

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DEVELOPER'S SUPERVISORS & NOTICES

Developer's Supervisors:

Name: [Redacted]

Email: [Redacted]

Name: [Redacted]

Email: [Redacted]

Notices:

For Developer:

Name: [Redacted]

Email: [Redacted]

For Owner:

[Redacted]

[Redacted]

[Redacted]

Attn: [Redacted]

Tel: [Redacted]

Email: [Redacted]

**DRAFT PROTOTYPE AGREEMENT
SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

SCHEDULE #5

PAYMENT SCHEDULE

The Contract Sum is \$[TBD].

The Contract Sum shall be paid by immediately available funds according to the payment schedule depicted below:

**DRAFT PROTOTYPE AGREEMENT
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SCHEDULE #7

FORM OF CHANGE ORDER⁸

SCHEDULE #8

⁸ **Note:** Please provide a form of change order for review.

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CAPACITY TEST

[Parties to add]

SCHEDULE #9

INDEPENDENT ENGINEER FORMS OF CERTIFICATE

**DRAFT PROTOTYPE AGREEMENT
SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

Exhibit A

Form of Payment and Performance Bond

**DRAFT PROTOTYPE AGREEMENT
SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

Exhibit B

Form Letter of Credit

**DRAFT PROTOTYPE AGREEMENT
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