

**GENERAL TERMS AND CONDITIONS OF  
SOLAR POWER & SERVICES AGREEMENT**

*These General Terms and Conditions (“General Conditions”) are dated as of 11th day of December, 2014 and are witnessed and acknowledged by SunEdison Government Solutions, LLC (“SunEdison”) and the City of Long Beach (“City”), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into Solar Power & Services Agreements that may be entered into between SunEdison and City or between their respective affiliates. Except to the extent SunEdison or City becomes a party to a Solar Power & Purchase Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or City.*

**1. DEFINITIONS.**

**1.1 Definitions.** In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means, the Solar Power & Services Agreement.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general

assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in the State of California or the City Offices are required or authorized by Applicable Law to be closed for business.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Delay Liquidated Damages” means the daily payment of (i) \$0.250/day/kW if the Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 2.3, Section 4.3(a) or Section 11.2.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means these Terms and Conditions.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means 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.

“Guaranteed Commercial Operation Date” has the meaning set forth in the Special Conditions, which date shall be extended day-for-day for Force Majeure Events.

“Host” means Purchaser.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 of the Special Conditions.

“Liens” has the meaning set forth in Section 7.1(e).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a System, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

“Net Metering Rules” means, collectively, and as amended from time to time, the California net metering statute, the California net metering regulation, orders issued by the California Public Utilities Commission, and the associated net metering tariff of the Local Electric Utility.

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble to the Solar Power & Services Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 of the Special Conditions.

“Production Excess” means the amount by which kWh generation by the System exceeds Purchaser’s load during any time period.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means such Business Day that occurs on the date that is ninety one (91) days after each successive annual anniversary of the Commercial Operation Date, provided, however, that no Purchase Date shall occur prior to such date that is five (5) years and ninety one (91) days after the Commercial Operation Date.

“Purchaser” has the meaning set forth in the Special Conditions.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Renewal Term” has the meaning set forth in Section 2.1.

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Special Conditions and all other solar or renewable energy subsidies and incentives.

“Solar Insolation” or “Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

“Solar Power & Services Agreement” means the Solar Power & Services Agreement (including the Schedules and Exhibits attached thereto) and these General Conditions (including the Exhibits attached hereto) to the extent incorporated therein.

“Solar Services” means the supply of electrical energy output from the System and any associated reductions in Purchaser’s peak demand from its Local Electric Utility.

“Solar Services Payment” or “Payment” has the meaning set forth in Section 6.1.

“Special Conditions” means the Solar Power and Services Agreement, excluding these General Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%), or (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Special Conditions.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Term” has the meaning set forth in Section 2.1.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement shall automatically renew for an additional five (5) year term (a “Renewal Term”), unless a written notice of non-renewal is given by either Party to the other Party at least one hundred and eighty (180) days prior to the expiration of the Initial Term or then applicable Renewal Term. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the “Term.” During any Renewal Term, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred and eighty (180) days’ prior written notice to the other Party.

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days’ prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, Column 1 of the Special Conditions, and Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically. Notwithstanding the foregoing, Purchaser may (i) terminate this Agreement with no liability whatsoever if Provider fails to commence construction of the System by the Construction Start Date as specified in the Special Conditions or (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, be entitled (as its sole

remedy) to Delay Liquidated Damages not to exceed \$15/kW, plus (if Installation Work had commenced at the Premises as of the date of termination) any costs reasonably incurred by Purchaser to return its Premises to its condition prior to commencement of the Installation Work. Further, Purchaser may terminate this Agreement with no liability whatsoever if Provider fails to commence Commercial Operations by the date that is sixty (60) days after the Guaranteed Commercial Operation Date. The Construction Start Date and Guaranteed Commercial Operation Date shall be extended on a day-for-day basis if, notwithstanding Provider’s commercially reasonable efforts, interconnection approval is not obtained within sixty (60) days after the Effective Date.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the “Option Price”) equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser’s intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser’s notice, Provider shall specify the Option Price, and Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the

provisions of the Agreement shall be applicable as if the Purchaser had not exercised any option to purchase the System.

2.4 Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3 is equal to the Fair Market Value (as determined by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3; otherwise, the costs of the appraisal shall be borne by Provider if such appraisal results in a value less than the value provided by Provider pursuant to Section 2.3.

2.5 Removal of System at Expiration. Subject to Purchaser's exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date. The Premises shall be returned to its original condition, except for System mounting pads or other support structures and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, (i) Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) at Provider's sole cost, (ii) and if Provider fails to remove the System within thirty (30) days of written notice from Purchaser that Provider has failed to timely remove the System in accordance with this Section 2.5, title to the System shall automatically transfer to Purchaser.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) The Provider determines that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(c) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors.

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.

(e) Provider has not received a fully executed (i) license in the form of Exhibit A of these General Conditions from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation or as may be reasonably requested by Provider to evidence Purchaser's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term.

(f) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(g) Purchaser has not received evidence reasonably satisfactory to it that (x) interconnection services will be available with respect to energy generated by the System and (y) the System will be eligible for Net Metering.

(h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that

would materially impair or prevent the installation, operation, maintenance or removal of the System.

(i) There has been a material adverse change in Purchaser's credit-worthiness.

2.7 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Provider's commencement of Installation Work, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) The Provider determines that the Premises, as is, is insufficient to accommodate the System.

(b) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(c) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Purchaser and its investors.

(d) Purchaser has not received evidence reasonably satisfactory to it that (x) interconnection services will be available with respect to energy generated by the System and (y) the System will be eligible for Net Metering.

(e) If Provider has increased the Kwh Rate above the "maximum rate" set forth in Schedule 2 of the Special Conditions as a consequence of interest rates in connection with Provider's financing of the System.

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 of the Special Conditions and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Provider shall

perform the Installation Work at the Premises between the times specified in the Special Conditions in a manner that complies with Long Beach's noise ordinance and minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.1.1 As-Built Drawings. Within one hundred twenty (120) days of the Commercial Operation Date, Provider should deliver to Purchaser two (2) copies of final as-built drawings plus one (1) copy on DVD.

3.2 Approvals; Permits. Purchaser shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR.

### 3.3 System Acceptance Testing

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

(c) If the construction site is not cleaned up and punch list items completed within thirty (30) days after the Commercial Operation Date, then Purchaser may withhold ten percent (10%) of invoiced amounts until those items are completed.

## 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result Purchaser's negligence or breach of its obligations hereunder shall be reimbursed by Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the

System and may, at its election, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

(a) Installation. Provider shall maintain and test the meter in accordance with but not limited to Applicable Law and as provided herein. Provider shall ensure that the meter is installed and calibrated correctly to manufacturer and/or utility specifications during commissioning of the System.

(b) Measurements. Readings of the meter shall be conclusive as to the amount of electric energy delivered to Purchaser; *provided*, that if the meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(c), or registers inaccurately, measurement of energy shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when meter was registering accurately; or (b) if no reliable information exists as to the period of time during which such meter was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 4.2(c) was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one half of the period from the date of the last previous test of such meter through the date of the adjustments, *provided, however*, that, in the case of clause (ii), the period covered by the correction under Section 4.2(c) shall not exceed twelve months.

(c) Testing and Correction.

(i) Purchaser's Right to Conduct Tests. Each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the meter. Provider shall provide at least twenty (20) days prior written notice to Purchaser of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Purchaser with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

(ii) Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(A) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(B) Provider shall, within thirty (30) days after receiving such notice from Purchaser, or Purchaser shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(C) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(D) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter under Section 4.2(c)(ii)(A) shall bear the cost of inspection and testing of the meter.

(E) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: (x) replaced or (y) adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4.2(b), and (c) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Purchaser if Purchaser was the disputing Party under 4.2(c)(ii)(A). If as a result of such adjustment the quantity of energy for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of energy for any period is increased (such quantity, the "Electricity Surplus Quantity"), Purchaser shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(d) No Duty on Purchaser. Notwithstanding the foregoing, the Parties acknowledge and agree that the Purchaser is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the meter or any other part of the System is out of service, is discovered to be inaccurate or registers inaccurate readings; is malfunctioning or is otherwise defective, it being agreed that at all times such responsibility or duty shall remain with the Provider.

#### 4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation, or (ii) terminate the Agreement pursuant to Section 2.2. Purchaser shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Purchaser and Provider shall amend the Agreement to specify the substitute premises. Purchaser shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing Party in connection with the substitute Premises. If Purchaser is unable to obtain such consents and releases for a substitute Premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and refiling the security interest of Provider's Financing Party in the System. Purchaser shall not pay for damage caused by Provider. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser's rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned to its original condition, except for incidental hardware or other support structures and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of the roof of the Premises, which shall be as leak proof as it was prior to removal of System. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Solar Services, and Purchaser shall reimburse Provider for any lost revenue during any transfer or construction time period (the "Transfer Time"), including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Transfer Time. For the purpose of calculating Solar Services Payments and lost revenue for such Transfer Time, Solar Services shall be deemed to have been produced at the average rate over

the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation).

(b) System Disruptions. In the event that (any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Attributes and any reduced Solar Incentives during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation).

#### 5. DELIVERY OF SOLAR SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the Solar Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of the Special Conditions, they represent a package of services and benefits, including reduction in the Purchaser's peak demand from the Local Electric Utility.

5.2 Estimated Annual Production. The annual estimate of Solar Services with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set as forth in Schedule 4 of the Special Conditions. The Parties shall amend the Agreement at or around the Commercial Operation Date to replace Schedule 4 to reflect the Estimated Annual Production for the System as actually installed.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of Solar Services does not include Environmental Attributes or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the



installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser, shall submit to SunEdison for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing by Provider, on behalf of Purchaser, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.5 Net Metering. The Parties will work cooperatively and in good faith to meet all Net Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Schedule Z). In the event that the System produces a Production Excess, then the Parties agree that (a) Purchaser shall be entitled to the associated Net Metering Credits and (b) Provider shall transmit such Production Excess into the Local Electric Utility system on behalf of and for the account of

Purchaser, and (c) Purchaser (or its designee) shall be entitled to any and all Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. In the event that Host is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser may terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in the Special Conditions.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(f) Performance Guarantee. Beginning on the Commercial Operation Date for the System, the System shall produce not less than ninety percent (90%) of the applicable Estimated Annual Production specified

in the Special Conditions as of the Effective Date during the Initial Term, unless, and then only to the extent that, the failure to meet the Estimated Annual Production is due to (a) failure, damage or downtime attributable to third parties or Purchaser, (b) a Force Majeure Event, or (c) acts or omissions of Purchaser of any of its obligations hereunder. Subject to the terms and conditions of this Agreement, if as of any anniversary of the Commercial Operation Date, the actual output of such System (the "Actual System Output") does not equal or exceed ninety percent (90%) of the Estimated Annual Production for such period, in its next invoice Provider shall credit Purchaser an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Purchaser would have paid for full requirements electric service from its Local Electric Utility during such period minus the applicable kWh Rate specified in the Special Conditions, multiplied by (ii) the difference between the Actual System Output and ninety percent (90%) of the Estimated Annual Production for such period; provided, however, such liquidated damages, shall not exceed the product of 200% of the then applicable kWh Rate multiplied by twenty percent (20%) of the Estimated Annual Production.

(g) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(h) Financing and City Property. Under no circumstance will financing arrangements made by Provider attach to Purchaser's land or property including the land or property of Purchaser described in the Special Conditions.

(i) Facility Mechanic's Lien - Removal of Liens. Purchaser shall not own the System and shall not be responsible for any mechanics lien or stop notice placed or attempted to be placed on the System by Provider's labor or material providers. Provider shall not cause or permit any liens or stop notices to attach or to be placed upon or encumber the property or Premises arising from or resulting out of any improvements, alterations or other work performed by Provider. If any such lien attaches, Provider agrees to cause the lien to be removed within ten (10) days of notification thereof by posting a bond, payment of the lien or otherwise. If Provider fails to remove the lien within such time period, in addition to its other remedies under this Agreement, Purchaser may undertake to cause such lien to be removed and charged to Provider any costs and expenses incurred in

connection with removal of said lien. Provider agrees to defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such lien.

(j) Prevailing Wages. Provider shall cause all work performed in connection with this Agreement to be performed in compliance with all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code. Purchaser and Indemnified Parties make no representation or statement that the work, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises. In the event of damages to Purchaser's Premises caused by, or as the result of the System, Provider shall, at its sole cost, repair said Premises to the condition existing prior to such damages.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License. Purchaser hereby grants to Provider the rights, coterminous with the Term, to use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and

conduits to interconnect or disconnect the System with the Premises' electrical wiring.

(i) Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (x) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (y) neither Purchaser nor Purchaser's landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser and Purchaser's landlord shall at all times have access to and the right to observe the Installation Work or System removal.

(ii) If Purchaser is a lessee of the Premises, Purchaser further covenants that it shall deliver to Provider, a license from Purchaser's landlord in substantially the form attached hereto as Exhibit A of these General Conditions.

(e) Temporary storage space during installation or removal. Purchaser shall use commercially reasonable efforts to obtain an agreement for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Sunlight Easements. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System, including but not limited to such actions as may be reasonably necessary to obtain a solar access easement for such purpose; provided that no such action shall require Purchaser to incur costs or expenses, or to exercise any of its land use or other regulatory powers as a municipality.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally; and may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and public policy, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California.

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) To Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein.

(c) To Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 4.1, AND 7.1 AND THIS SECTION 8, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser Obligations. Purchaser shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Solar Services to Purchaser (other than income taxes imposed upon Provider). Provider shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Purchaser. Purchaser shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

## 10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party’s failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action nor inaction). A Force Majeure Event shall not be based on the economic hardship of either Party.

Due to the constitutional limitations on cities pertaining to multiple year contracts, a Force Majeure event shall include a “budget non-appropriation event” in which the City’s appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for City. During the continuation of a budget non-appropriation event as defined above, if the City does not otherwise have other funds available to make payments otherwise due on this Agreement, the City shall not be obligated to pay for (and the Provider shall not be required to deliver) Solar Services provided under this Agreement until the budget non-appropriation event has terminated. City agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than one hundred eighty (180) days, either Party may terminate this Agreement.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure

Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider’s performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon ninety (90) days’ prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount;

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser’s written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed; and

(iv) After commencement of Installation Work at Premises and prior to the Commercial Operation Date, Provider abandons the system and fails to remove the System (or any portion thereof) from the Premises.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

#### 11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2, and (B) Provider may exercise any other remedy it may have at law or equity or under the Agreement.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5

hereof, absent any purchase of the System by Purchaser pursuant to Section 2.2 hereof. If Provider fails to remove the System within thirty (30) days of written notice from Purchaser that Provider has failed to timely remove the System in accordance with this Section 11.3, title to the System shall automatically transfer to Purchaser.

#### 12. LIMITATIONS OF LIABILITY.

Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

#### 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the

characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form attached hereto as Exhibit C, including such changes as Provider or the Financing Party reasonably request.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.4 Notice of System Transfer. Provider shall notify Purchaser in writing of any change in ownership of the System.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

#### 15. GOODWILL AND PUBLICITY.

Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

#### 16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations or Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent

such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser's Indemnity. Subject to Section 12, Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Purchaser's sole negligence or willful misconduct. Purchaser shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

17. INSURANCE. Provider shall maintain the insurance coverages set forth in Exhibit D in full force and effect throughout the term.

#### 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

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

18.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Purchaser shall be cumulative and without

prejudice to any other right or remedy, whether contained herein or not.

18.5 Forward Contract. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e) and (f) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without reference to any choice of law principles. The Parties agree that the courts of the State of California and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement any courts described in this Section 18.7.

18.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.



18.9 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.10 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.12 Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Purchaser further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Provider's actual damages.

*[Remainder of page intentionally left blank.]*

These General Terms and Conditions are witnessed and acknowledged by SunEdison and City below. For the avoidance of doubt, neither SunEdison nor City shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

“SUNEDISON”:

SUNEDISON GOVERNMENT SOLUTIONS, LLC  
By: Marc Fioravanti  
Name: MARC FIORAVANTI  
Title: VICE PRESIDENT  
Date: 12/12/2014

Form approved 12/11/14 *JPH*

“CITY”:

CITY OF LONG BEACH **Assistant City Manager**  
By: T. B. West EXECUTED PURSUANT  
Name: Patrick H. West TO SECTION 301 OF  
Title: City Manager THE CITY CHARTER.  
Date: December 19, 2014

APPROVED AS TO FORM  
12/17, 20 14  
CHARLES PARKIN, City Attorney  
By Linda T. Vu  
LINDA T. VU  
DEPUTY CITY ATTORNEY

**Exhibit A**  
**of General Conditions**

[PURCHASER'S LETTERHEAD]

[Landlord's Address]

Attn: Authorized Representative

Re: Proposed Solar Power Installation at [Address of Premises]

Lease dated [ ] between CITY OF LONG BEACH and [LANDLORD] (the "Lease")

Dear Authorized Representative:

As has been discussed with you, the City of Long Beach and an affiliate of SunEdison Government Solutions, LLC ("SunEdison") have entered into a Solar Power & Services Agreement, pursuant to which SunEdison will install, finance, operate, and maintain a solar photovoltaic system at the above-referenced premises which the City of Long Beach leases from you pursuant to the Lease. By signing below and returning this letter to us, you confirm that:

1. The solar photovoltaic system and the renewable energy (including environmental credits and related attributes) produced by the system are personal property, and shall not be considered the property (personal or otherwise) of [LANDLORD] upon installation of the system at the premises.
2. SunEdison or its designee (including finance providers) shall have the right without cost to access the premises in order to install, operate, inspect, maintain, and remove the solar photovoltaic system. [LANDLORD] will not charge Purchaser or Provider any rent for such right to access the premises.
3. [LANDLORD] has been advised that the finance providers for the solar photovoltaic system have a first priority perfected security interest in the system. SunEdison and the finance providers for the solar photovoltaic system (including any system lessor or other lender) are intended beneficiaries of [LANDLORD]'s agreements in this letter.
4. [LANDLORD] will not take any action inconsistent with the foregoing.

We thank you for your consideration of this opportunity and we look forward to working with you in our environmental campaign to increase the utilization of clean, renewal energy resources.

Very truly yours,

CITY OF LONG BEACH

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

Name:

Title: Authorized Representative

Acknowledged and agreed by:

[LANDLORD]

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

Name:

Title: Authorized Representative

**Exhibit B**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Host's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement. The Financing Party shall not sell the System and transfer the Agreement to a third party unless such third party has agreed to cure the defaults under this Agreement.

iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with the Financing Party or its assignee having the same terms and conditions as this Agreement.

(d) **Right to Cure.**

i. Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The

Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

\*\*\*

**Exhibit C**  
**of General Conditions**

**Acknowledgment and Confirmation**

This Acknowledgment and Confirmation, dated as of [DATE] (this "Acknowledgment"), is made by the City of Long Beach, a municipal corporation (the "Purchaser"), with reference to the Solar Power & Services Agreement, dated as of [DATE] (the "SPSA") entered into between the Purchaser and SunEdison Government Solutions, LLC, a Delaware limited liability company (the "Provider"). This Acknowledgment is provided pursuant to Section 13 of the SPSA to [FINANCING PARTY], which is providing financial accommodations to Provider. Capitalized terms not otherwise defined herein have the meaning in the SPSA.

The solar photovoltaic system (the "System") installed, operated and maintained by Provider pursuant to the SPSA is located at Purchaser's facility [ADDRESS] (the "Premises").

1. Acknowledgment of Collateral Assignment.

- (a) Purchaser acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the SPSA.
- (b) Purchaser acknowledges that (i) it has been advised that (A) Provider intends to assign its interest in the System to the Financing Party and upon such assignment, the Financing Party shall be the owner of the System, (B) the Financing Party shall lease the System to the Provider pursuant to a lease (the "Lease") and (C) Provider shall grant a first priority security interest in the System to Financing Party and (ii) Financing Party has relied upon the characterization of the System as personal property, as agreed in the SPSA in accepting such security interest as collateral for its financing of the System. [APPLICABLE IF SALE-LEASEBACK FINANCING IS USED.]
- (d) Until further written notice from the Financing Party, Purchaser agrees to make all payments due Provider under the SPSA to Financing Party at the following address:

[TBD]

2. Confirmation. Purchaser confirms the following matters for the benefit of the Financing Party:

- (a) To the Purchaser's knowledge, there exists no default and no event or condition that would, with the giving of notice or lapse of time, constitute a default, under the SPSA.
- (c) Purchaser [OWNS/LEASES] the Premises and upon completion of the System, and at the request of the Provider or Financing Party, the Purchaser shall confirm that it has approved the System as installed at the Premises.
- (d) Provider or its designee (including Financing Party) shall have the right to access the System on the Premises in order to install, operate, maintain, and remove the System.
- (e) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the System as an interest adverse to Financing Party's security interest therein.
- (f) The SPSA is in full force and effect and there are no other agreements or representations of any kind between Purchaser and Provider as to the subject matter of the SPSA; and Purchaser agrees that it will not amend, terminate, modify, or (except as expressly provided in the SPSA) renew or extend the SPSA without prior written consent from the Financing Party.
- (g) Purchaser will use commercially reasonable efforts to place its successors, assigns, and lien holders on notice of the ownership of the System by Provider or Financing Party, the existence of the security interest in favor of Financing Party, and the fact that the System is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
- (h) Purchaser acknowledges and agrees that Financing Party has not assumed and does not have any obligation or liability under or pursuant to the SPSA, and the exercise by Financing Party of its

rights and remedies under the SPSA shall not constitute an assumption of Provider's obligation thereunder (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by the Financing Party or as otherwise provided herein).

Neither this Acknowledgement nor any of the terms hereof may be amended, terminated, supplemented, waived or modified, except pursuant to a written instrument executed by each of the Financing Party, Provider and Purchaser.

The Financing Party shall have the right to assign its interest in the SPSA to other persons and the Financing Party shall be an express third-party beneficiary of the rights described herein and in the SPSA (including, without limitation, Sections 13 and 16 the SPSA) and for its benefit.

**PURCHASER:**

City of Long Beach

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

**PROVIDER:**

SunEdison Government Solutions, LLC

By: Sun Edison LLC, its manager

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

## EXHIBIT D

### OF

## SOLAR POWER & SERVICES AGREEMENT

*This Exhibit D is intended to be incorporated by reference into Solar Power & Services Agreements that may be entered into between SunEdison and City or between their respective affiliates. Except to the extent SunEdison or City becomes a party to a Solar Power & Purchase Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or City.*

INSURANCE. Definitions. Concurrent with the execution of this Agreement and at all time during the term of this Agreement, PROVIDER shall:

(1) Procure and maintain the following types of insurance at PROVIDER'S sole expense for the duration of this Agreement, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or from authorized non-admitted insurers that have ratings of or equivalent to an A:VIII by A.M. Best Company:

(a) Commercial general liability insurance equivalent in coverage scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in aggregate. Such coverage shall include but is not limited to broad form contractual liability coverage, cross liability protection, and products and completed operations. The City of Long Beach, its officials, employees, and agents shall be added as additional insureds by endorsement equivalent in coverage scope to ISO form CG 20 26 11 85 and such endorsement shall protect the City, its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the PROVIDER or from this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

(b) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92) covering symbol 1 (Any Auto) in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

(c) All Risk property insurance in an amount sufficient to cover the full replacement value of PROVIDER'S personal property, improvements and equipment on the Premises Associated with this Agreement. With respect to damage to property, PURCHASER and PROVIDER hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

(d) Workers' compensation insurance as required by the State of California and, if workers' compensation is required, employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. PROVIDER agrees to obtain and furnish evidence to City of the waiver of PROVIDER'S workers' compensation insurance carrier of any right of subrogation against the City.

(2) Require its SUBPROVIDERS, if allowed, to procure and maintain the preceding types of insurance at SUBPROVIDER'S sole expense for the duration of this Agreement, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or from authorized non-admitted insurers that have ratings of or equivalent to an A:VIII by A.M. Best Company.

(3) Require its contractors and subcontractors working in connection with the Agreement, if allowed, to procure and maintain the following types of insurance at their sole expense for the duration of this Agreement, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or from authorized non-admitted insurers that have ratings of or equivalent to an A:VIII by A.M. Best Company:

(a) Commercial general liability insurance (equivalent in coverage scope to ISO form CG 00 01 11 85 or 11 88) in an amount not



less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Such coverage shall include but is not limited to broad form contractual liability coverage, cross liability protection, and products and completed operations coverage. The City of Long Beach, its officials, employees, and agents shall be added as additional insureds by endorsement (equivalent in coverage scope to ISO form CG 20 26 11 85) and such endorsement shall protect the City, its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the contractor or subcontractor or from this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

- (b) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92) covering symbol 1 (Any Auto) in an amount not less than One Million Dollars (\$1,000,000) combined single limit.
- (c) Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000) covering the work of any person or organization providing architectural, consulting, engineering, environmental, landscape architectural, surveying, real estate, soils engineering, or other professional services.
- (d) All Risk property insurance in an amount sufficient to cover the full replacement value of contractor's or subcontractor's personal property, improvements and equipment on the Premises.
- (e) Workers' compensation insurance required by the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident.

Any self-insurance program or self-insured retention must be approved separately in writing by PURCHASER and shall protect the City of Long Beach, its officials, employees, and agents in the same manner and to the

same extent as they would have been protected had the policy or policies not contained retention provisions.

Each insurance policy shall be endorsed to state that coverage shall not be cancelled, nonrenewed or changed by either party except after thirty (30) days prior written notice to PURCHASER and shall be primary to PURCHASER. Any insurance or self-insurance maintained by PURCHASER shall be excess to and shall not contribute to insurance or self-insurance maintained by PROVIDER.

PROVIDER shall deliver to PURCHASER certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of this Agreement. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. PROVIDER shall, at least thirty (30) days prior to expiration of such policies, furnish PURCHASER with evidence of renewals. PURCHASER reserves the right to require complete certified copies of all said policies at any time.

Such insurance as required herein shall not be deemed to limit PROVIDER'S liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. PROVIDER understands and agrees that, notwithstanding any insurance, PROVIDER'S obligation to defend, indemnify, and hold PURCHASER, its officials, agents, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by the condition of the Premises or in any manner connected with or attributed to the acts or omissions of PROVIDER, its officers, agents contractors, employees, SUBPROVIDERS, licensees, vendors, patrons, or visitors, or the operations conducted by or on behalf of PROVIDER, or the PROVIDER'S use, misuse, or neglect of the Premises.

Not more frequently than every three (3) years, if in the opinion of PURCHASER the amount of the foregoing insurance coverages is not adequate, PROVIDER shall amend the insurance coverage as required by PURCHASER'S Risk Manager or designee.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the PURCHASER'S Risk Manager or designee.

**SOLAR POWER & SERVICES AGREEMENT**

This Solar Power & Services Agreement is made and entered into as of this 11th day of December, 2014 (the "Effective Date"), between SunEdison Government Solutions, LLC, a Delaware limited liability company ("Provider"), and The City of Long Beach ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

**WITNESSETH:**

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of December 11, 2014 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

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

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety.
2. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

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

**SUNEDISON GOVERNMENT SOLUTIONS, LLC**

By: SUN EDISON LLC

By: Marc Fioravanti  
 Name: MARC FIORAVANTI  
 Title: VICE PRESIDENT  
 Date: 12/11/2014

Form approved 12/11/14 *JPH*

**THE CITY OF LONG BEACH**

Assistant City Manager

By: P. H. West  
 Name: Patrick H. West  
 Title: City Manager  
 Date: December 19, 2014

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

APPROVED AS TO FORM

12/17, 2014  
 CHARLES PARKIN, City Attorney  
 By: Linda T. Vu  
 LINDA T. VU  
 DEPUTY CITY ATTORNEY

## SCHEDULES

### **I. Schedule 1: Description of Premises and System**

**Solar System Premises:** 2525 Grand Avenue, Long Beach, CA, 90815

**Anticipated Rebate or Subsidy:** NA

**Solar System Size:** 499 kW (DC)

**Scope:** Design and supply grid-interconnected, parking canopy mounted solar electric (PV) system.

**Module:** SunEdison SE-R365ByC

**Inverter:** Chint Power (CPS SCA23KTL-DO/US-480 & CPS SCA28KTL-DO/US-480) (IEEE 1547 qualified)

### **II. Schedule 2 -- kWh Rate**

#### **a. *Parking Lot Re-Paving Not Included in Provider's Scope***

The kWh Rate reflected in this Schedule 2(a) shall be applicable if the Purchaser elects to not have the parking lot re-paving included in the Provider's scope of work. The kWh Rate with respect to the System under the Agreement in this instance shall be in accordance with the following schedule:

<b>Year of System Term</b>	<b>kWh Rate[*] (\$/kWh)</b>	<b>Year of System Term</b>	<b>\$/kWh Rate[*] (\$/kWh)</b>
1	\$0.1296	14	\$0.1296
2	\$0.1296	15	\$0.1296
3	\$0.1296	16	\$0.1296
4	\$0.1296	17	\$0.1296
5	\$0.1296	18	\$0.1296
6	\$0.1296	19	\$0.1296
7	\$0.1296	20	\$0.1296
8	\$0.1296	21	\$0.1296
9	\$0.1296	22	\$0.1296
10	\$0.1296	23	\$0.1296
11	\$0.1296	24	\$0.1296
12	\$0.1296	25	\$0.1296
13	\$0.1296		

\*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

**b. Parking Lot Re-Paving Included in Providers' Scope**

The Early Termination Fee reflected in this Schedule 2(b) shall be applicable if the Purchaser elects to have the parking lot re-paving included in the Provider's scope of work. The Early Termination Fee with respect to the System under the Agreement in this instance shall be in accordance with the following schedule:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$0.145	11	\$0.145
2	\$0.145	12	\$0.145
3	\$0.145	13	\$0.145
4	\$0.145	14	\$0.145
5	\$0.145	15	\$0.145
6	\$0.145	16	\$0.145
7	\$0.145	17	\$0.145
8	\$0.145	18	\$0.145
9	\$0.145	19	\$0.145
10	\$0.145	23	\$0.145
11	\$0.145	24	\$0.145
12	\$0.145	25	\$0.145
13	\$0.145		

\*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

**III. Schedule 3 – Early Termination Fee**

**a. Parking Lot Re-paving Not Included in Provider's Scope**

The Early Termination Fee reflected in this Schedule 3(a) shall be applicable if the Purchaser elects to not have the parking lot re-paving included in the Provider's scope of work. The Early Termination Fee with respect to the System under the Agreement in this instance shall be in accordance with the following schedule:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)
1*	\$4.23
2	\$3.77
3	\$3.53
4	\$3.22
5	\$2.90
6	\$2.56
7	\$2.50
8	\$2.43
9	\$2.36
10	\$2.29
11	\$2.22
12	\$2.14
13	\$2.06
14	\$1.97

Purchase Date Occurs on the 91 <sup>st</sup> day following : (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
	--
	--
	--
	--
	--
5 <sup>th</sup> Anniversary	\$2.06
6 <sup>th</sup> Anniversary	\$2.00
7 <sup>th</sup> Anniversary	\$1.93
8 <sup>th</sup> Anniversary	\$1.86
9 <sup>th</sup> Anniversary	\$1.79
10 <sup>th</sup> Anniversary	\$1.72
11 <sup>th</sup> Anniversary	\$1.64
12 <sup>th</sup> Anniversary	\$1.56
13 <sup>th</sup> Anniversary	\$1.47

15	\$1.93
16	\$1.84
17	\$1.75
18	\$1.65
19	\$1.55
20	\$1.45
21	\$1.35
22	\$1.24
23	\$1.12
24	\$1.00
25	\$0.88

14 <sup>th</sup> Anniversary	\$1.43
15 <sup>th</sup> Anniversary	\$1.34
16 <sup>th</sup> Anniversary	\$1.25
17 <sup>th</sup> Anniversary	\$1.15
18 <sup>th</sup> Anniversary	\$1.05
19 <sup>th</sup> Anniversary	\$0.95
20 <sup>th</sup> Anniversary	\$0.85
21 <sup>st</sup> Anniversary	\$0.74
22 <sup>nd</sup> Anniversary	\$0.62
23 <sup>rd</sup> Anniversary	\$0.50
24 <sup>th</sup> Anniversary	\$0.38

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.

**b. Parking Lot Re-Paving Included in Provider's Scope**

The Early Termination Fee reflected in this Schedule 3(b) shall be applicable if the Purchaser elects to have the parking lot re-paving included in the Provider's scope of work. The Early Termination Fee with respect to the System under the Agreement in this instance shall be in accordance with the following schedule:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)
1*	\$4.76
2	\$4.22
3	\$3.96
4	\$3.60
5	\$3.23
6	\$2.85
7	\$2.78
8	\$2.71
9	\$2.63
10	\$2.55
11	\$2.46
12	\$2.37
13	\$2.28
14	\$2.18
15	\$2.13
16	\$2.03
17	\$1.92
18	\$1.81
19	\$1.70
20	\$1.59
21	\$1.47
22	\$1.34
23	\$1.21
24	\$1.07
25	\$0.94

Purchase Date Occurs on the 91 <sup>st</sup> day following : (Each "Anniversary" below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
	--
	--
	--
	--
	--
5 <sup>th</sup> Anniversary	\$2.35
6 <sup>th</sup> Anniversary	\$2.28
7 <sup>th</sup> Anniversary	\$2.21
8 <sup>th</sup> Anniversary	\$2.13
9 <sup>th</sup> Anniversary	\$2.05
10 <sup>th</sup> Anniversary	\$1.96
11 <sup>th</sup> Anniversary	\$1.87
12 <sup>th</sup> Anniversary	\$1.78
13 <sup>th</sup> Anniversary	\$1.68
14 <sup>th</sup> Anniversary	\$1.63
15 <sup>th</sup> Anniversary	\$1.53
16 <sup>th</sup> Anniversary	\$1.42
17 <sup>th</sup> Anniversary	\$1.31
18 <sup>th</sup> Anniversary	\$1.20
19 <sup>th</sup> Anniversary	\$1.09
20 <sup>th</sup> Anniversary	\$0.97
21 <sup>st</sup> Anniversary	\$0.84
22 <sup>nd</sup> Anniversary	\$0.71
23 <sup>rd</sup> Anniversary	\$0.57
24 <sup>th</sup> Anniversary	\$0.44

c. At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

d. \*Includes Early Termination prior to the Commercial Operation Date.

**IV. Schedule 4 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	765,100	14	716,833
2	761,275	15	713,249
3	757,468	16	709,683
4	753,681	17	706,135
5	749,912	18	702,604
6	746,163	19	699,091
7	742,432	20	695,595
8	738,720	21	692,117
9	735,026	22	688,657
10	731,351	23	685,214
11	727,694	24	681,788
12	724,056	25	678,379
13	720,436		

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

V. **Schedule 5 – Notice Information**

**Purchaser:**

City of Long Beach  
City Manager  
333 W Ocean Boulevard  
Long Beach, CA 90802

**Provider:**

SunEdison Government Solutions, LLC  
c/o Sun Edison LLC  
44 Montgomery Street, Suite 2200  
San Francisco, CA 94133  
1-415-230-3400

*With a copy to*

General Counsel  
600 Clipper Drive  
Belmont, CA 94002  
Tel. (866)786-3347  
Fax (443) 909-7150

**Financing Party:**

[To be provided by Provider when known]

**SOLAR POWER & SERVICES AGREEMENT**

This Solar Power & Services Agreement is made and entered into as of this 11th day of December, 2014 (the "Effective Date"), between SunEdison Government Solutions, LLC, a Delaware limited liability company ("Provider"), and The City of Long Beach ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

**WITNESSETH:**

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of December 11, 2014 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

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

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety.
2. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

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

**SUNEDISON GOVERNMENT SOLUTIONS, LLC**

**THE CITY OF LONG BEACH**

By: SUN EDISON LLC

Assistant City Manager

By: Marc Fioravanti  
 Name: MARC FIORAVANTI  
 Title: VICE PRESIDENT  
 Date: 12/12/2014

By: Patrick H. West  
 Name: Patrick H. West  
 Title: City Manager  
 Date: December 14, 2014

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Form approved 12/11/14 *JPH*

APPROVED AS TO FORM

12/17, 2014  
 CHARLES PARKIN, City Attorney  
 By: Linda T. Vu  
 LINDA T. VU  
 DEPUTY CITY ATTORNEY



## SCHEDULES

### I. Schedule 1: Description of Premises and System

**Solar System Premises:** 2400 E. Spring Street, Long Beach, CA 90806

**Anticipated Rebate or Subsidy** NA

**Solar System Size:** 650 kW (DC)

**Scope:** Design and supply grid-interconnected, parking canopy mounted solar electric (PV) system.

**Module:** SunEdison SE-R365ByC

**Inverter:** Chint Power (CPS SCA23KTL-DO/US-480 & CPS SCA28KTL-DO/US-480) (IEEE 1547 qualified)

### II. Schedule 2 - - kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$0.1157	14	\$0.1157
2	\$0.1157	15	\$0.1157
3	\$0.1157	16	\$0.1157
4	\$0.1157	17	\$0.1157
5	\$0.1157	18	\$0.1157
6	\$0.1157	19	\$0.1157
7	\$0.1157	20	\$0.1157
8	\$0.1157	21	\$0.1157
9	\$0.1157	22	\$0.1157
10	\$0.1157	23	\$0.1157
11	\$0.1157	24	\$0.1157
12	\$0.1157	25	\$0.1157
13	\$0.1157		

\*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

**III. Schedule 3 – Early Termination Fee**

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 <sup>st</sup> day following : (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
1*	\$3.56		--
2	\$3.17		--
3	\$2.98		--
4	\$2.73		--
5	\$2.46		--
6	\$2.19		--
7	\$2.14		--
8	\$2.08		--
9	\$2.03		--
10	\$1.97		--
11	\$1.91		--
12	\$1.84		--
13	\$1.78		--
14	\$1.71		--
15	\$1.67		--
16	\$1.59		--
17	\$1.52		--
18	\$1.44		--
19	\$1.36		--
20	\$1.28		--
21	\$1.19		--
22	\$1.10		--
23	\$1.01		--
24	\$0.91		--
25	\$0.81		--
		5 <sup>th</sup> Anniversary	\$1.69
		6 <sup>th</sup> Anniversary	\$1.64
		7 <sup>th</sup> Anniversary	\$1.58
		8 <sup>th</sup> Anniversary	\$1.53
		9 <sup>th</sup> Anniversary	\$1.47
		10 <sup>th</sup> Anniversary	\$1.41
		11 <sup>th</sup> Anniversary	\$1.34
		12 <sup>th</sup> Anniversary	\$1.28
		13 <sup>th</sup> Anniversary	\$1.21
		14 <sup>th</sup> Anniversary	\$1.17
		15 <sup>th</sup> Anniversary	\$1.09
		16 <sup>th</sup> Anniversary	\$1.02
		17 <sup>th</sup> Anniversary	\$0.94
		18 <sup>th</sup> Anniversary	\$0.86
		19 <sup>th</sup> Anniversary	\$0.78
		20 <sup>th</sup> Anniversary	\$0.69
		21 <sup>st</sup> Anniversary	\$0.60
		22 <sup>nd</sup> Anniversary	\$0.51
		23 <sup>rd</sup> Anniversary	\$0.41
		24 <sup>th</sup> Anniversary	\$0.31

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.

**IV. Schedule 4 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	945,200	14	885,572
2	940,474	15	881,144
3	935,772	16	876,738
4	931,093	17	872,354
5	926,437	18	867,993
6	921,805	19	863,653
7	917,196	20	859,334
8	912,610	21	855,038
9	908,047	22	850,763
10	903,507	23	846,509
11	898,989	24	842,276
12	894,494	25	838,065
13	890,022		

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

V. **Schedule 5 – Notice Information**

**Purchaser:**

**City of Long Beach**  
City Manager  
333 W Ocean Boulevard  
Long Beach, CA 90802

**Provider:**

SunEdison Government Solutions, LLC  
c/o Sun Edison LLC  
44 Montgomery Street, Suite 2200  
San Francisco, CA 94133  
1-415-230-3400

*With a copy to*

General Counsel  
600 Clipper Drive  
Belmont, CA 94002  
Tel. (866)786-3347  
Fax (443) 909-7150

**Financing Party:**

[To be provided by Provider when known]

**SOLAR POWER & SERVICES AGREEMENT**

This Solar Power & Services Agreement is made and entered into as of this 11th day of December, 2014 (the "Effective Date"), between SunEdison Government Solutions, LLC, a Delaware limited liability company ("Provider"), and The City of Long Beach ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

**WITNESSETH:**

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of December 11, 2014 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

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

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety.
2. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

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

SUNEDISON GOVERNMENT SOLUTIONS, LLC

THE CITY OF LONG BEACH

By: SUN EDISON LLC

Assistant City Manager

By: Marc Fioravanti  
 Name: MARC FIORAVANTI  
 Title: VICE PRESIDENT  
 Date: 12/12/2014

By: Patrick H. West  
 Name: Patrick H. West  
 Title: City Manager  
 Date: December 11, 2014

EXECUTED PURSUANT TO SECTION 301 OF CITY CHARTER.

Form approved, 12/11/14 JPH

APPROVED AS TO FORM

12/12, 2014  
 CHARLES PARKIN, City Attorney

By: Linda T. Vu  
 LINDA T. VU  
 DEPUTY CITY ATTORNEY

## SCHEDULES

### I. Schedule 1: Description of Premises and System

**Solar System Premises:** 4300 E. Donald Douglas Drive, Long Beach, CA 90808

**Anticipated Rebate or Subsidy** NA

**Solar System Size:** 1,130 kW (DC)

**Scope:** Design and supply grid-interconnected, parking canopy mounted solar electric (PV) system.

**Module:** SunEdison SE-R365ByC

**Inverter:** Chint Power CPS SCA28KTL-DO/US-480 (IEEE 1547 qualified)

### II. Schedule 2 - - kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

<b>Year of System Term</b>	<b>kWh Rate[*] (\$/kWh)</b>	<b>Year of System Term</b>	<b>\$/kWh Rate[*] (\$/kWh)</b>
1	\$0.1296	14	\$0.1296
2	\$0.1296	15	\$0.1296
3	\$0.1296	16	\$0.1296
4	\$0.1296	17	\$0.1296
5	\$0.1296	18	\$0.1296
6	\$0.1296	19	\$0.1296
7	\$0.1296	20	\$0.1296
8	\$0.1296	21	\$0.1296
9	\$0.1296	22	\$0.1296
10	\$0.1296	23	\$0.1296
11	\$0.1296	24	\$0.1296
12	\$0.1296	25	\$0.1296
13	\$0.1296		

\*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

### III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 <sup>st</sup> day following : (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
1*	\$4.12		--
2	\$3.66		--
3	\$3.43		--
4	\$3.13		--
5	\$2.82		--
6	\$2.50	5 <sup>th</sup> Anniversary	\$2.00
7	\$2.44	6 <sup>th</sup> Anniversary	\$1.94
8	\$2.37	7 <sup>th</sup> Anniversary	\$1.87
9	\$2.31	8 <sup>th</sup> Anniversary	\$1.81
10	\$2.24	9 <sup>th</sup> Anniversary	\$1.74
11	\$2.16	10 <sup>th</sup> Anniversary	\$1.66
12	\$2.09	11 <sup>th</sup> Anniversary	\$1.59
13	\$2.01	12 <sup>th</sup> Anniversary	\$1.51
14	\$1.93	13 <sup>th</sup> Anniversary	\$1.43
15	\$1.88	14 <sup>th</sup> Anniversary	\$1.38
16	\$1.80	15 <sup>th</sup> Anniversary	\$1.30
17	\$1.71	16 <sup>th</sup> Anniversary	\$1.21
18	\$1.62	17 <sup>th</sup> Anniversary	\$1.12
19	\$1.52	18 <sup>th</sup> Anniversary	\$1.02
20	\$1.42	19 <sup>th</sup> Anniversary	\$0.92
21	\$1.32	20 <sup>th</sup> Anniversary	\$0.82
22	\$1.21	21 <sup>st</sup> Anniversary	\$0.71
23	\$1.10	22 <sup>nd</sup> Anniversary	\$0.60
24	\$0.99	23 <sup>rd</sup> Anniversary	\$0.49
25	\$0.87	24 <sup>th</sup> Anniversary	\$0.37

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.

**IV. Schedule 4 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	1,684,500	14	1,578,233
2	1,676,078	15	1,570,342
3	1,667,697	16	1,562,490
4	1,659,359	17	1,554,677
5	1,651,062	18	1,546,904
6	1,642,807	19	1,539,170
7	1,634,592	20	1,531,474
8	1,626,420	21	1,523,816
9	1,618,287	22	1,516,197
10	1,610,196	23	1,508,616
11	1,602,145	24	1,501,073
12	1,594,134	25	1,493,568
13	1,586,164		

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.



V. **Schedule 5 – Notice Information**

**Purchaser:**

**City of Long Beach**  
City Manager  
333 W Ocean Boulevard  
Long Beach, CA 90802

**Provider:**

SunEdison Government Solutions, LLC  
c/o Sun Edison LLC  
44 Montgomery Street, Suite 2200  
San Francisco, CA 94133  
1-415-230-3400

*With a copy to*

General Counsel  
600 Clipper Drive  
Belmont, CA 94002  
Tel. (866)786-3347  
Fax (443) 909-7150

**Financing Party:**

[To be provided by Provider when known]