

MICROGRID SERVICES AGREEMENT

This Microgrid Services Agreement (the “**MSA**” or “**Agreement**”) is made effective as of the latest date of execution hereof (the “**Effective Date**”) by and between Scale and Customer listed below (each a “**Party**” and collectively the “**Parties**”).

This Agreement sets forth the terms and conditions of the purchase and sale of the Microgrid Services produced by the Microgrid described below at Customer’s facility listed below (the “**Site**”). This Agreement consists of (1) the below MSA Details, (2) Description of Microgrid Services, (3) Terms & Conditions, (4) MSA Design, (5) Standard Scope, and (6) Project Schedule each of which is expressly incorporated herein. Capitalized terms used herein shall have the meaning ascribed below or as otherwise provided in this Agreement.

MSA Details		
Site	Microgrid located at the connecting points of the assets at 404 Aviation Blvd., Santa Rosa, CA 95403.	
Microgrid & Price	The Microgrid will consist of: 0.458MW Photovoltaic Solar Array] (the “ PV System ”) 2.121MWh Battery Energy Storage System] (the “ BESS ”) Microgrid controller (islandable)	<u>Contract Price:</u> \$22,167 / month
Annual Escalator	3%	
Assumptions	a. Self-Generation Incentive Program (“ SGIP ”) = \$390,248.00 b. Interconnection Allowance: \$47,800	
Commercial Operation Date	The Microgrid is expected to achieve the commercial operation and begin to deliver the Microgrid Services to the Site within eighteen (18) months after execution hereof (the “ COD ”).	
Expiration Date	Twenty (20) years after the COD referenced above	
Tax Status	Tax exempt	
Conditions Precedent	a. Receipt (i) a draft interconnection agreement with the final estimated interconnection costs from the local utility; (ii) a preliminary cost estimate for interconnection from the local utility; or (iii) any similar document from the local utility confirming interconnection costs with reasonable certainty, all in a form acceptable to Scale.	
Purchase Option Details	First Option: Year 6 following COD for \$2,529,643 Second Option: Year 15 following COD for \$1,112,507	
Scale Reference #		

ACCEPTED AND AGREED by acknowledgement of each Party’s authorized representative, as of the Effective Date.

				SCALE MICROGRID SOLUTIONS OPERATING, LLC, its Manager			
By	_____	Date	_____	By	_____	Date	_____
Name	_____	Title	_____	Name	_____	Title	_____
Notice Address	Attn: _____			Notice Address	Attn: Ryan Goodman, CEO		
	_____				51 S Broad Street		
	_____				Ridgewood, NJ 07450		
	Email: _____				Email: legal@scalemicrogrids.com		

Emergency Power Services	The Microgrid will be capable of delivering emergency power to the Customer Premises during periods when there is a utility power outage, subject to the technical specifications and design limitations of the system, including the availability of solar irradiance during such outage and the state of charge of the BESS at the start of any such outage, to the extent island mode functionality is included for each component (collectively, the “Emergency Power Services”). If the Emergency Power Services are not provided as expected during a utility power outage, Scale will take commercially reasonable steps to: • provide access to a remote representative within one (1) hour after Scale receives a notification from the MCP (as defined below) of an event in which a utility outage has occurred and the Microgrid is not performing as designed, except in the event there is no internet or wireless connection at the Site. Customer shall always endeavor to notify Scale as soon as it becomes aware of a utility power outage; and • if electricity is unable to be restored remotely within four (4) hours due to an error requiring onsite response, schedule to dispatch a Scale service technician to site within one business day after notification by the Customer of an event in which a utility outage has occurred and is ongoing and the Microgrid is not performing as designed.
Microgrid Operations	When the Microgrid is not providing the Emergency Power Services, Scale will operate the Microgrid to: • supply electricity to the Site to reduce the amount of electricity Customer must purchase from the grid, to charge/discharge the BESS, or to deliver the electricity to the grid under a net metering or other arrangement; • manage Customer’s electric demand on the grid with a goal of reducing Customer’s peak demand and limiting energy costs; and • participate in utility programs, wholesale electricity market operations, or other programs in which the Site or Microgrid are eligible to participate (directly or via an authorized aggregator or curtailment service provider). Unless agreed otherwise according to the terms of this agreement, any reduction in the Customer’s utility bill resulting directly from the operation of the Microgrid shall benefit solely to the Customer. Scale shall retain all other benefits, whether financial or otherwise, arising from the provision of Microgrid Services, ownership, or operation of the Microgrid, except (i) that any renewable energy certificates generated by the Microgrid shall be the property of Customer and (ii) as explicitly detailed in Section 6 of the MSA Terms and Conditions concerning revenue sharing for demand response and other programs.
Microgrid Maintenance	<u>Planned Maintenance.</u> A Scale representative will visit the Site at appropriate intervals to perform all preventative maintenance tasks on the Microgrid to enable Scale to deliver the Microgrid Services. <u>Reactive Maintenance.</u> Except in the performance of the Emergency Power Services, Scale will use commercially reasonable efforts to respond within one (1) business day to any defect in or malfunction of the Microgrid or, if required, make arrangements to visit the Site at a mutually agreed upon date. <u>Cost of Maintenance.</u> The cost of maintaining the Microgrid is the sole responsibility of Scale except: • that, in the event the Microgrid includes an Emergency Power System, if the sum of the amount of time during which (i) Customer uses the Emergency Power System during a utility power outage and (ii) the Emergency Power System is otherwise used for the benefit of the Customer, is more than the number of hours indicated in the “Maximum EPS Operating Hours” in the MSA Details, Customer may be billed for additional costs for maintenance or major overhauls in line with the normal billing practices of Scale; • for Additional Maintenance, as defined below. <u>Operations and Maintenance Exclusions.</u> After COD, Customer shall reimburse Scale for any documented actual and direct additional costs incurred by Scale, including costs for maintenance, repairs, replacements of, the Microgrid if such costs arise from: (i) a change in law; (ii) an Excluded Event (except if covered by Scale’s insurance coverage), or (iii) on-Site maintenance services requested by Customer outside of the scope of

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	Microgrid Maintenance., Such additional costs include any diagnostic and corrective services at Scale’s or Scale’s contractors’ then-current standard rates..
System Capacity	Customer acknowledges that the capacity of the Microgrid components may change by up to 10% prior to NTP. Additionally, the capacity of the Microgrid will decrease over time due to the technical nature of its components. Scale will monitor the Microgrid capacity during the Term and take commercially reasonable steps to ensure material alignment with component specifications and to enforce warranty claims as applicable.
Annual Performance Report	Within sixty (60) days after each anniversary of COD during the Term, Scale will generate a report detailing electricity production and availability of the Microgrid over the reporting period as well as potential operational improvements for the Microgrid (“ Annual Report ”).
Microgrid Controls Platform	Scale utilizes a microgrid controls platform (“ MCP ”) to securely access the Microgrid at anytime from anywhere to monitor the health of the Microgrid and optimize the Microgrid’s performance. MCP consists of telemetry equipment and cloud-based services to store data and report key metrics. Scale may provide access to a customer version of the MCP in its discretion. Any upgrade to the MCP is included in the Contract Price hereunder. Additional services provided by the interface required by a change in law or program participation will be considered additional services subject to additional costs to the extent agreed to in writing by Scale, which may be rejected in Scale’s sole and absolute discretion. Scale reserves the right to modify or discontinue features of the MCP at any time in its sole discretion provided that Scale is able to continue to deliver the Microgrid Services described hereunder.

Performance Guarantee

1. **Definitions.** For purposes of this Performance Guarantee, the following terms shall have the meanings set forth below:
 - 1.1 **“Actual kWh”** means the AC electricity generated by the Microgrid in kilowatt-hours during a specific Performance Period, as measured at the delivery point as reported by Scale in the Annual Report.
 - 1.2 **“Excused Condition”** means any of the following conditions to the extent such condition affects Scale’s ability to provide the Microgrid Services or to generate or measure Actual kWh: any Excluded Event, any scheduled maintenance on the Microgrid being performed in accordance with the maintenance schedule, not to exceed 120 hours per year, or any maintenance or inspection of any equipment (other than the Microgrid) that requires the Microgrid to be offline.
 - 1.3 **“Excused kWh”** means the quantity of kilowatt-hours that Scale estimates would have been produced but for any Excused Condition.
 - 1.4 **“Guaranteed kWh”** means the quantity of kilowatt-hours that Scale guarantees that the Microgrid will produce in any given Reconciliation Period as indicated in Schedule 1 attached hereto, *minus* the Excused kWh during the relevant Reconciliation Period.
 - 1.5 **“Performance Guarantee”** means the Production Guarantee, as defined below.
 - 1.6 **“Performance Guarantee Term”** means the period beginning three months after the Commercial Operation Date and continuing until the date of expiration or early termination of the Agreement for any reason.
 - 1.7 **“Reconciliation Period”** means the time during which the Performance Guarantee shall be measured and reconciled during the Performance Guarantee Term, as indicated in Schedule 1 to this Performance Guarantee.
2. **Production Guarantee.** During the Performance Guarantee Term, Scale shall cause the Microgrid to generate the Guaranteed kWh during each Reconciliation Period, as detailed in Schedule 1 to this Performance Guarantee (the **“Production Guarantee Schedule”**) and subject to the terms and conditions set forth herein. Within forty-five (45) days after delivery of the Annual Report after each Reconciliation Period,
 1. if the Actual kWh is less than the Guaranteed kWh, then Scale shall pay Customer an amount equal to: Reconciliation Rate *times* (Guaranteed kWh *minus* Actual kWh).
 2. if the Actual kWh delivered is greater than the Estimated kWh, then Customer shall pay Scale an amount equal to: 50% of the relevant Reconciliation Rate *times* (Guaranteed kWh *minus* Actual kWh).
4. **Obligations of the Parties.** Scale reserves the right in its sole discretion to repair or replace the Microgrid, in whole or in part, during the Term and to conduct on-site inspections and measurements related to the proper operation of the Microgrid. Customer agrees to provide commercially reasonable assistance to Scale as reasonably required to deliver this Performance Guarantee, including sharing utility information and additional information reasonably requested by Scale.
5. **Sole Remedy for Performance Guarantee Failure.** To the extent that Scale fails to achieve the Performance Guarantee in any Guarantee Year, such failure shall not constitute a breach of this Agreement and Scale shall, as the Customer’s sole and exclusive remedy for such failure, pay to the Customer the Reconciliation Payment in accordance with this Performance Guarantee. The Reconciliation Payment will in no event exceed the total amount payable by Customer for Microgrid Services during the relevant Guarantee Year. If Scale fails to pay the Reconciliation Payment within thirty (30) days of it becoming due hereunder, Customer shall notify Scale of such failure.

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Schedule 1 to Performance Guarantee
Production Guarantee Schedule

Contract Year	Reconciliation Period	Estimated kWh	Guaranteed kWh*	Reconciliation Rate
1	1 st Reconciliation Period	571,204	514,084	\$0.1794
2		568,348	511,514	
3		565,507	508,956	
4	2 nd Reconciliation Period	562,679	506,411	\$0.1961
5		559,866	503,879	
6		557,066	501,360	
7	3 rd Reconciliation Period	554,281	498,853	\$0.2144
8		551,510	496,359	
9		548,752	493,877	
10	4 th Reconciliation Period	546,008	491,408	\$0.2343
11		543,278	488,951	
12		540,562	486,506	
13	5 th Reconciliation Period	537,859	484,073	\$0.2562
14		535,170	481,653	
15		532,494	479,245	
16	6 th Reconciliation Period	529,832	476,848	\$0.2801
17		527,182	474,464	
18		524,546	472,092	
19	7 th Reconciliation Period	521,924	469,731	\$0.3017
20		519,314	467,383	

* Subject to adjustment based on Excused kWh in the relevant Reconciliation Period.

MSA Terms & Conditions

1. Customer Eligibility.

1.1 Authority. Customer represents and warrants that its representative executing this Agreement has the power and authority to bind Customer to this Agreement and all of the rights and obligations contained herein.

1.2 Credit. Customer represents and warrants that the ownership and financial information that Customer has provided or will provide to Scale during the Term is true and accurate and fairly represents Customer's financial position as of the date presented. During the Term, Customer shall provide annual audited financial statements to Scale for Customer and any financial guarantors hereunder within ninety (90) days of each fiscal year, and quarterly unaudited financial statements upon Scale's request if Customer's or any of its financial guarantors' creditworthiness deteriorates. Scale reserves the right to demand reasonable assurances or other securities if Customer's or any guarantors' financial position materially changes during the Term, and Customer's failure to provide the same shall constitute a material breach hereunder and/or an adjustment to the Contract Price pursuant to the mechanism of Section 2.4.

1.3 Conditions Precedent. After the Effective Date but prior to satisfaction of all Conditions Precedent ("Notice to Proceed" or "NTP"), Scale shall keep Customer apprised of all material costs incurred by Scale which shall not exceed \$70,000 ("Pre-NTP Cap"). For costs to be incurred by Scale above the Pre-NTP Cap, Scale will obtain Customer's approval in writing prior to incurring such costs. Scale's obligation to perform hereunder is subject to the satisfaction or waiver of the Conditions Precedent listed in the MSA Details. Customer shall provide documentation in form and substance reasonably acceptable to Scale to satisfy each Condition Precedent within ninety (90) days after execution hereof, or such longer period as reasonably agreed between the Parties. If a Condition Precedent fails to be satisfied within the timeframe specified due solely to the fault of Customer, the utility, or any other third party whose performance is necessary to satisfy such Condition Precedent, Scale may, in its discretion either: (i) terminate this Agreement and Customer shall pay Scale for costs incurred or committed through the date of termination, including without limitation costs associated with engineering, permitting, procurement, construction, and financing to the extent such costs cannot be reasonably avoided; or (ii) waive such unsatisfied Condition Precedent.

2. Standard Scope and Contract Price.

2.1 The Microgrid. The Microgrid will consist of the components listed in the MSA Details and such ancillary equipment as required in Scale's reasonable opinion for the proper operation of the Microgrid. Scale has or may produce certain designs and drawings attached hereto as the MSA Design exhibit (the "MSA Designs"), which will be updated for the purpose of permitting and performing its obligations hereunder. Scale will provide the MSA Designs to Customer prior to beginning construction. The MSA Designs will indicate: (i) the location of the Microgrid on the Site (through the site layout), (ii) the ownership boundaries of the Microgrid, and (iii) the points of delivery of natural gas (if applicable) to the Microgrid and electricity to and from the Microgrid (collectively, the "Delivery Points"). Scale will install the Microgrid materially in accordance with the MSA Designs.

2.2 Site Conditions. Customer is responsible for any unforeseen pre-existing conditions at the Site that prevent or affect the installation or operation of the Microgrid, including without limitation, unpermitted work, soil conditions, hazardous materials, structural integrity of existing structures, existing roof conditions, and condition of existing electrical gear. Scale acknowledges that it has had the opportunity to conduct a non-invasive, visual inspection of the Site reasonably necessary to diligence and evaluate the feasibility and expected costs of the project prior to entering into this Agreement. Notwithstanding the foregoing, Customer remains responsible for any pre-existing conditions not reasonably discoverable through such inspection.

2.3 Standard Scope. Scale's obligations hereunder are conditioned on such work falling within Scale's standard scope of work attached hereto as the Standard Scope of Work for the components making up the Microgrid (the "Standard Scope") based on Scale's standard schedule attached hereto as the Standard Scope of Work. Unless otherwise indicated in the MSA Designs and Standard Scope (if any), Scale's Standard Scope includes: standard procurement and construction scope; standard wage rates, including complying with prevailing wage requirements for the construction scope and interconnection application, except to the extent higher wages are required for the investment tax credits, which have been included in the Contract Price; no unforeseen or hazardous site conditions or material upgrades to existing electrical works; interconnection costs borne by Scale capped at Scale's standard assumption, which is the "Interconnection Allowance" (if indicated in the MSA Details); and customary government costs, and fees.

2.4 Adjustment to Contract Price. (a) Between NTP and COD, Scale reserves the right to update the Contract Price provided in the MSA Details, if, upon further diligence regarding the Site and/or assessment of new circumstances, Scale determines that there are conditions outside of the Standard Scope, or new circumstances due to no fault of Scale, including without limitation: (i) change in law; (ii) insurance; (iii) any change in import tariffs; (iv) any interconnection costs exceeding the Interconnection Allowance; (viii) Customer's delay in performing its obligations hereunder; or (ix) material delay to the construction schedule resulting from compliance with Section 11.5 of the Lease Agreement (Nesting Bird Protection). (b) Customer shall have thirty (30) days (i) to accept the new price; or (ii) to reject the price and terminate this Agreement; if no response has been delivered by Customer within that 30-day period from receipt of price change notice, the new Contract Price will be deemed accepted. If this Agreement is terminated pursuant to this Section 2.4, then Customer shall pay Scale for costs incurred or committed through the date of termination, including without limitation costs associated with engineering, permitting, procurement, construction, and financing to extent such costs cannot be reasonably avoided, plus 10% overhead.

2.5 Pre-Construction Termination. Excluding as set forth in Sections 1.3 and 2.4, before NTP, Scale may terminate this Agreement for any reason by notice to Customer, with no further obligation from customer to Scale.

2.6 Payment. Beginning at COD, the Contract Price will be automatically debited to Scale's account through ACH payment in United States dollars upon issuance of each invoice. Invoices shall be issued as follows: (i) fixed charges

(if any) will be invoiced monthly in advance based on the monthly rate provided in the MSA Details; and (ii) variable charges (if any) will be invoiced monthly in arrears in an amount calculated by multiplying the variable rate(s) indicated in the MSA Details by the energy (kWh), capacity (kW), or operating hours (OPH) delivered (as measured by Scale and subject to adjustment to the extent any Excluded Event impacts operation or production of the Microgrid). Late payments will be charged interest at 1.5% per month ("Interest"). Notwithstanding the foregoing or anything else in this Agreement, if the Contract Price is structured on a \$/kWh basis, then beginning on COD, Customer agrees to pay for at least the minimum annual number of kilowatt-hours (the "Minimum kWhs") as indicated in the MSA Details. On each anniversary of COD, the then-current Contract Price shall increase pursuant to the Annual Escalator provided in the MSA Details by multiplying the then-current Contract Price by (1 *plus* the indicated rate or published index rate). Customer's obligation to pay the Contract Price and make any other payments hereunder shall be absolute and unconditional and shall not be subject to any existing or future abatement, reduction, setoff, defense, or counterclaim for any reason.

2.7 Taxes. Customer agrees to pay or promptly reimburse Scale, as applicable, for any applicable sales, use, property, possessory interest, or other taxes or assessments imposed on the Microgrid, Contract Price, Microgrid Services, the Site, or otherwise arising hereunder, except for Scale's income taxes which shall remain Scale's obligation.

3. Customer Obligations

3.1 Site Ownership. Customer either (i) owns the Site or (ii) has obtained all required consents from the owner(s) of the Site to allow the Microgrid to be installed and operated on the Site and as otherwise required for Scale to comply with its obligations under this Agreement for the Term.

3.2 Site Access. Customer covenants and agrees to ensure Scale, its affiliates, and its contractors have proper access to the Site as needed to install and maintain the Microgrid and otherwise perform its obligations hereunder throughout the Term of the Agreement as well as for the removal of the Microgrid. Site access and occupancy rights shall be governed by and set forth pursuant to that certain Lease Agreement between the Parties dated as of [●] (the "Lease Agreement").

3.3 Third-Party Engagement. Customer hereby authorizes Scale to submit on Customer's behalf any permit or interconnection application, and engage any curtailment or other service provider, that Scale reasonably requires for the performance of its obligations hereunder.

3.4 Microgrid Security. Customer covenants and agrees not to allow anyone other than Scale to perform any work on the Microgrid during the Term. Customer agrees to visually inspect the Microgrid at such frequency as indicated by Scale during the commissioning process and provide notice to Scale if the Microgrid appears modified, damaged, or unsafe or if the Microgrid or a portion thereof is stolen.

3.5 Utilities. Customer shall provide, at its cost, all water, gas, electricity, heat, light, power, telephone, sewer, refuse and trash collection, and all other utilities and other services and associated charges required for the installation and proper operation of the Microgrid. Customer shall provide secure parking for Scale service vehicles and storage facilities on the Site for spare parts, materials, and consumables as reasonably required by Scale.

3.6 Internet. Scale shall obtain internet or wireless connection at the Site, including at least a two (2) hour backup power source.

3.7 Standards. Customer agrees not to modify its interconnection agreement or take any other action or fail to take any action that would interfere with the Microgrid, Microgrid Services, or other benefits available to Scale through the ownership or operation of the Microgrid during the Term. Scale is entitled to seek specific performance of this provision. Customer agrees that it and anyone performing work on the Site during the Term will comply with all laws and regulations, including without limitation those promulgated under OSHA.

3.8 Insolation. Customer acknowledges and agrees that unobstructed access to sunlight ("Insolation") for certain portions of the Microgrid is essential to Scale's performance of its obligations. Customer shall not in any way cause and, where possible, shall not in any way permit, any interference with the Microgrid's Insolation. If Customer becomes aware of any activity or condition that could diminish the Insolation of the Microgrid, Customer shall notify Scale immediately and shall cooperate with Scale in preserving the Insolation levels existing as of the commencement of the work hereunder. The Parties agree that reducing Insolation would prohibit Scale from performing the Microgrid Services, and that Scale is entitled to seek specific enforcement of this provision. If natural conditions obstruct suddenly or over time the Microgrid's Insolation, such as snow falls, tree falls or other vegetation growth, Customer shall promptly take reasonable remediation steps at its sole expense.

4. Scale's Obligations

4.1 Subcontracting. Scale may subcontract all or any portion of its obligations hereunder to affiliates or subcontractors in its sole discretion. Scale shall remain responsible for the work performed by any such third party.

4.2 Microgrid Installation. Scale shall select the time for the installation of the Microgrid based on reasonable consultation with the Customer and notify Customer of the dates that such work shall be performed. Scale shall perform the work in accordance with the standards provided herein and after beginning construction, shall use commercially reasonable efforts to achieve COD. If the installation of the Microgrid is delayed by more than thirty (30) days due to Customer or those under Customer's control, then the Contract Price may be modified to reflect the cost of such delay.

4.3 Delivery of Microgrid Services. Beginning on COD and continuing for the remainder of the Term, Scale shall exercise due skill and care to operate and maintain the Microgrid in a manner which delivers the Microgrid Services in accordance with prudent industry standards. If some Microgrid Services are able to be delivered before the Microgrid achieves COD, Customer agrees to begin paying a prorated amount of the Contract Price for the portion of the Microgrid Services being delivered.

4.4 Work Standards. Scale shall perform the work, or cause the work to be performed, in a good and workmanlike manner, free of defects, and in compliance with applicable laws in effect as of the Effective Date, permits, approvals, and otherwise in accordance with this Agreement.

4.5 Excluded Events: Scale shall not be responsible for performance of the Microgrid Services, any repair, maintenance, or replacement of the Microgrid or any portion thereof, or any other costs including the costs of work or delays associated with the following causes (each an "Excluded Event"): (a) Customer failure to perform any

obligation under this Agreement, including without limitation restricting Scale's access to the Site or allowing anyone other than Scale or its approved service providers to access or perform any work on the Microgrid; (b) any event of Force Majeure, (c) action, inaction, or conduct of Customer, or its employees, customers, invitees, residents, contractors, the utility, or any other third party other than Scale or its approved service providers; (d) any governmental or other authority from which a permit, approval, or other consent is necessary, provided Scale has reasonably pursued such permit, approval, or consent in good faith and the impediment was not reasonably foreseen; (e) the discovery on site of any hazardous substance or unobvious dangerous condition, at the Site; and (f) any inaccuracy, incompleteness, or omission of any schematics, drawings, electric load estimations, or other information provided by or on behalf of Customer.

4.6 No Other Warranties. EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN, SCALE MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE OR MERCHANTABILITY, REGARDING THE MICROGRID OR ANY SERVICES PROVIDED HEREUNDER.

5. Term and Termination

5.1 Term. This Agreement shall continue from the Effective Date until the Expiration Date, unless terminated early pursuant to the terms of this Agreement (the "Term").

5.2 Renewal. The Parties will confirm their mutual intent to renew this Agreement for [two] additional [5] year term[s] by providing written notice no less than one hundred eighty days before expiration of the then-current term.

5.3 Defaults. Customer shall be in default under this Agreement if it: (i) fails to make any payment when due hereunder (including adjustments to Contract Price pursuant to Section 2.4); (ii) fails to perform any material covenant or obligation hereunder or under the Lease Agreement; (iii) becomes insolvent or bankrupt; (iv) defaults under any indebtedness or financing facility (subject to any applicable grace periods); (v) fails to provide adequate assurances or other security within thirty (30) days of demand for the same pursuant to Section 1.2; (vi) fails to maintain any required insurance; or (vii) transfers or vacates the Site without complying with the provisions hereunder. Scale shall be in default under this Agreement if it: (i) fails to make any payment when due hereunder, or (ii) fails to perform any material covenant or obligation hereunder.

5.4 Remedies. In the event of a default, the non-defaulting Party: (i) shall provide the defaulting Party with notice and (except in the event of non-payment or bankruptcy), thirty (30) days to cure such default (or such longer period not to exceed ninety (90) days provided that the defaulting Party is diligently working to cure such default); (ii) may suspend performance hereunder during the continuation of such default (except that Customer may not withhold payments for Microgrid Services delivered); (iii) may terminate this Agreement within thirty (30) days if the default has not been remedied within the cure period referenced above, (iv) report such default to a credit rating agency, and (v) exercise any and all remedies available under applicable law.

5.5 Early Termination by Customer. In the event of early termination of this Agreement by Customer for Scale's default, Customer shall be entitled to: (i) purchase the

Microgrid pursuant to the terms herein, for the Purchase Price (as defined below) or (ii) require Scale to remove the Microgrid.

5.6 Early Termination by Scale. In the event of early termination of this Agreement by Scale for Customer's default, Scale shall be entitled to: (i) payment by Customer of the remaining Contract Price (based on expected performance and production levels) for the remainder of the Term, discounted at 4%; *plus* (ii) all past due amounts (*plus* Interest); (iii) all fees and expenses relating to the enforcement of this Agreement and collection of payments hereunder; (iv) payment of the actual cost of any recaptured tax credits and value of replacing forfeited Attributes, and (v) the removal and return of the Microgrid. With Customer's written permission, Scale may abandon all or any portion of the Microgrid and transfer title to Customer on an AS IS WHERE IS basis. If Customer withholds such permission, Customer shall be responsible for and shall pay to Scale the actual costs associated with the removal and proper disposal of the Microgrid.

5.7 "Force Majeure" means any event or circumstances beyond the reasonable control of the Party claiming Force Majeure which could not reasonably have been prevented through reasonable diligence of such Party and includes, without limitation: war; insurrection; riot; terrorism; economic sanction or embargo; cyber attacks; strikes; explosion; fire; earthquake; abnormal weather condition; hurricane; flood; lightning; wind; drought; disease or pandemic; material supply chain delays or disruptions; act of God; changes in law or other binding order; failure to act on the part of any government or other approving authority (provided that such action has been timely requested and diligently pursued); extended interruption of electricity or natural gas supply; and failure of equipment outside of the control of the Party claiming Force Majeure. Customer's decision to close, vacate, or modify the use of its facilities or the Microgrid shall not constitute a Force Majeure excusing Customer's performance hereunder.

5.8 Except as otherwise provided herein, if either Party is wholly or partly unable to timely perform its obligations hereunder (except obligations to issue payment) because of a Force Majeure, that Party shall be excused from the performance to the extent affected by such Force Majeure and the time for performing such obligations extended as reasonably necessary if: (i) the affected Party promptly notifies the other Party in writing reasonably describing the event; (ii) the impact of the Force Majeure is of no greater scope and of no longer duration than reasonably required; and (iii) the affected Party uses commercially reasonable efforts to mitigate the impact of such Force Majeure. The Term shall be extended day-for-day for each day performance is suspended due to a Force Majeure. In the event of a Force Majeure event lasting more than one hundred and eighty (180) days, either Party may have the right to terminate this Agreement in its sole discretion. If, at any time, Customer terminates this Agreement pursuant to Customer invoking Section 5.8, Customer shall pay Scale for all costs incurred or subject to a binding commitment through the date of termination, including without limitation, costs associated with engineering, permitting, procurement, construction, and the costs of unwinding any current debt, equity, hedging, or other financing arrangements related to the Microgrid, to the extent such costs cannot be reasonably avoided.

6. Ownership.

6.1 Microgrid. Customer acknowledges and agrees that the Microgrid is Scale's personal property under the Uniform Commercial Code and that this is a service agreement and not a sale agreement or a lease. Scale owns the Microgrid for all purposes, including any data generated from the Microgrid. Customer shall be permitted to use any data related to the Microgrid which Scale makes available to Customer via performance monitoring provided hereunder for Customer's lawful purposes. Customer shall at all times keep the Microgrid free and clear of all liens, claims, levies and legal processes not created by Scale, and shall at Customer's expense protect and defend Scale against the same.

6.2 UCC Filing. Scale may file with the relevant local authorities a UCC-1 financing statement giving notice of Scale's ownership interest in the Microgrid.

6.3 Other Attributes. Customer agrees all tax credits, incentives, rebates, environmental attributes (excluding renewable energy certificates), and electric market participation benefits arising from the ownership of the Microgrid, the provision of Microgrid Services, the generation of electricity, demand response or curtailment, capacity or other ancillary services provided by the Microgrid (the "Attributes") are the property of Scale. The renewable energy certificates generated by the Microgrid shall be owned by Customer and not by Scale. Customer agrees to cooperate so that Scale may claim these Attributes, which may include, without limitation, executing certain net metering, interconnection, or other third-party agreements. If any amounts generated from Attributes are paid to Customer, including the amounts assumed in the MSA Details, Customer shall pay such amounts to Scale without setoff or deduction within ten (10) days of receipt. With respect to Scale's participation in any demand response program, Scale agrees to pay Customer the percentage of the profits generated therefrom as indicated under "DR Revenue Sharing" in the MSA Details, as substantiated by reasonable evidence, within sixty (60) days after the end of each Contract Year. Such participation shall at all times be subject to the terms and conditions of this Agreement.

6.4 Customer represents and warrants that none of the electricity provided by the Microgrid will be used to generate energy for the purpose of heating a swimming pool.

7. Transfers.

7.1 Purchasing the Microgrid. Customer has the option to purchase the Microgrid on the dates indicated in the MSA Details under "Purchase Option Details" for the price provided by Scale (the "Purchase Option"), which shall equal the greater of the value specified in the Purchase Options Details or the then fair market value of the Microgrid, which will be calculated based on the age and degradation of the Microgrid and will account for the actual cost of unwinding any current debt, equity, hedging, or other financing arrangements related to the Microgrid (the "Purchase Price"). In no event will the Purchase Price be less than the fair market value of the Microgrid. Customer will provide Scale at least one hundred and eighty (180) days notice of its intent to exercise such Purchase Option and Scale will notify Customer of the Purchase Price within sixty (60) days after receipt of such timely written request for the same from Customer. Upon payment of the Purchase Price and all past due amounts (*plus* Interest), Scale will cause all right, title, and interest in the Microgrid to transfer to Customer on

an AS IS WHERE IS basis and shall have no further obligation to Customer hereunder.

7.2 Vacating the Site. If Customer transfers or vacates the Site during the Term, Customer shall either: (i) transfer this Agreement and all rights and obligations hereunder to the new tenant or owner of the Site by obtaining Scale's prior written consent to such transfer, which consent shall not be unreasonably withheld, provided that Scale may withhold such consent if the new tenant or owner fails to satisfy Scale's or its lenders' creditworthiness and other financing-related requirements, or (ii) purchase the Microgrid by paying Scale the Purchase Price. Customer shall provide Scale at least one hundred and eighty (180) days written notice of its intent to vacate the site.

7.3 Assignment. Scale may assign, sell, or transfer the Microgrid and this Agreement, in whole or in part without Customer's consent to any affiliate of Scale or any lender. Scale may assign this Agreement to any other third party with Customer's prior written consent, which consent shall not be unreasonably withheld. Customer shall not assign all or any part or benefit of this Agreement without obtaining prior written consent of Scale. Any purported assignment by either Party in violation of this Section shall be null and void.

7.4 Change of Control. A Change of Control shall be deemed to have occurred upon a transaction or series of transactions, including but not limited to, merger, consolidation, reorganization, liquidation, dissolution, sale or disposition, during which Customer or its parent or managing entity ceases to (i) directly or indirectly own more than fifty percent (50%) of the Customer's assets or (ii) control or manage day-to-day operations and major policy decisions concerning operations of Customer ("Change of Control"). A Change of Control of Customer shall constitute a material breach of this Agreement unless: (i) the new owner has a credit rating issued by S&P Global Ratings, Moody's, or Fitch Ratings that is at least as strong as Customer's credit rating at the time of execution of this Agreement and tangible net worth equal to or greater than the tangible net worth of the owner as of the date of execution of this Agreement; or (ii) Scale consents to such Change of Control prior to the same becoming effective. Customer shall notify Scale of any Change of Control within three (3) business days after the same becomes effective.

8. System Removal.

8.1 If the Microgrid needs to be removed for after termination by Scale due to a Customer's default or at Customer's request for roof repairs, Customer agrees to have the Microgrid removed in accordance with this Section; provided that such removal shall not cause a recapture of any tax credits.

8.2 Scale will propose a time-and-materials rate to cover Scale's cost for removal of the Microgrid. If Customer agrees, Customer shall provide Scale reasonable access to the Site to remove the Microgrid at a mutually agreeable time and at Customer's expense. Scale will patch and seal any roof penetrations associated with the removal of the Microgrid; Scale shall have no obligation to repair any ordinary wear and tear on the Site, to provide any replacement parts, or to remove any concrete pads or underground conduit or wiring.

8.3 Upon expiration of this Agreement or Customer's termination of this Agreement due to a Scale's default, Scale shall be solely responsible for the cost of such removal and for any damage or liability arising from such removal.

9. Indemnification and Liability

9.1 Scale shall assume liability for, and will indemnify, defend and hold harmless Customer from and against all claims including reasonable attorneys' fees and expenses that may be imposed on, incurred by or asserted against Customer and its directors, officers, owners, agents and employees (the "**Customer Indemnified Persons**"), including but not limited to any loss, damage or liability attributable to any death or personal injury of any person whatsoever and any damage or loss whatsoever to any property, which arises out of or in connection with (i) the negligence, recklessness or willful misconduct of Scale or its employees, agents or contractors (collectively, "**Scale Personnel**") or the performance of Scale's obligations hereunder, (ii) the material breach by Scale of any of its representations and warranties contained in this Agreement, and (iii) any violation of applicable law or governmental approvals by Scale's Personnel.

9.2 Customer shall assume liability for, and will indemnify, defend and hold harmless Scale from and against all claims including reasonable attorneys' fees and expenses that may be imposed on, incurred by or asserted against Scale and its directors, officers, owners, agents and employees (the "**Scale Indemnified Persons**"), including but not limited to any loss, damage or liability attributable to any death or personal injury of any person whatsoever and any damage or loss whatsoever to any property, which arises out of or in connection with (i) the negligence, recklessness or willful misconduct of Customer or its employees, customers, invitees, residents, agents or contractors (collectively, "**Customer Personnel**") or the performance of Customer's obligations hereunder, (ii) the material breach by Customer of any of its representations and warranties contained in this Agreement, and (iii) any violation of applicable law or governmental approvals by Customer's Personnel.

9.3 NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, NEITHER PARTY NOR ANY OF ITS INDEMNIFYING PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ANY OF ITS INDEMNIFIED PERSONS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY, DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST REVENUES, PROFITS, OR GOODWILL FOR ANY MATTER ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT WHETHER FORESEEABLE OR NOT.

9.4 SCALE'S LIABILITY FOR ACTUAL AND DIRECT DAMAGES, IF ANY, ARISING AS A RESULT OF ANY DEFAULT BY SCALE UNDER THIS AGREEMENT, INCLUDING ANY BREACH OF WARRANTY, WILL IN NO EVENT EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER TO SCALE DURING THE PRIOR TWENTY-FOUR (24) MONTHS.

9.5 NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS SET FORTH IN SECTION 9.3 SHALL NOT APPLY TO LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SCALE OR ITS AFFILIATES, AGENTS, OR SUBCONTRACTORS. HOWEVER, IN ALL CASES, SCALE'S LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE SHALL NOT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY SCALE'S INSURANCE CARRIER PURSUANT TO PARAGRAPH 10.1 OF THIS AGREEMENT.

10. Insurance; Risk of Loss.

10.1 Insurance. Scale and Customer will provide certificates of insurance prior to commencement of construction. Customer's insurance coverage shall contain (i) no limitation or exclusion for vicarious liability or statutory liability including, without limitation, liability pursuant to New York Labor Law 200, 240, 241, and (ii) no Action-Over

exclusion or any limitation that would prohibit or restrict coverage for claims, suits, or tenders between named insureds and additional insureds. Scale shall purchase: (i) builder's risk insurance during the construction period; (ii) permanent property and casualty insurance for the replacement value of the Microgrid during the operating Term hereunder, and (iii) other customary insurance coverages. Customer requires the additional coverage attached as Exhibit "B," at Customer's cost. The Parties shall maintain coverage for the Term pursuant to the coverages accepted at that time. Each Party, its approved successors and assigns and, upon request, its financing sources will be listed as additional insureds, loss payees, and certificate holders of the other Party's insurance, other than worker's compensation. Each Party will be entitled to receive advance notice of cancellation of the other Party's insurance.

10.2 Risk of Loss. Scale shall at all times bear the risk of loss to the Microgrid unless and until title to the Microgrid transfers to Customer pursuant to the Purchase Option or a separate agreement. If the Microgrid is damaged, stolen, impaired, or destroyed at any time before or after COD, Scale may, in its sole discretion, apply the net proceeds of any insurance claim to the replacement, repair, restoration, modification, or improvement of the Microgrid or may otherwise terminate this Agreement.

11. Notices. Any notices under this Agreement shall be given in writing and delivered to the Notice Address provided in the signature block with a copy sent to the email address provided. Notices shall be deemed delivered on: (i) the date sent if a copy of the notice is sent via email on the same day with email receipt confirmed or (ii) the actual date of delivery. Either party may update its address for notices by providing written notice of the same to the other party.

12. Severability. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the remaining provisions and the remainder of the affected provision, provided that the invalidity or unenforceability of the said provision shall not prevent performance of this Agreement.

13. No Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults whether of a like kind or different nature.

14. Confidentiality. Each Party shall consider all information furnished by the other Party to be confidential ("Confidential Information") and shall not disclose any Confidential Information to any third party or use Confidential Information for any purpose other than the performance of its obligations under this Agreement, unless it obtains prior written consent from the disclosing Party. "Confidential Information" includes, without limitation, all technical or business information, including plans, photographs, designs, drawings, blueprints, specifications, inventions, data, trade secrets, pricing, financials, and other materials or information relating to this Agreement, whether written, oral, electronic, or in any other form. All Confidential Information is and shall remain the property of the disclosing Party. Each Party shall protect the other Party's Confidential Information using the same degree of care it uses to protect its own confidential information of like kind, but in no event less than reasonable care. The receiving Party shall ensure that Confidential Information is clearly marked and stored as proprietary to the disclosing Party and shall not use such information to perform under any contract for a third party. Upon written request of the disclosing Party, the receiving

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Party shall promptly return or destroy all Confidential Information in its possession. Notwithstanding the foregoing, since Customer is a public entity subject to the California Public Records Act ("CPRA"), Customer shall not be deemed in breach of this Section 14 for disclosures required under CPRA, provided that (i) Customer gives Scale prompt written notice of any request for disclosure of Confidential Information to allow Scale an opportunity to seek a protective order or other appropriate remedy, and (ii) Customer discloses only the portion of Confidential Information that its legal counsel determines is legally required.

15. Intellectual Property. Scale owns all intellectual property rights associated with the Microgrid, MSA Designs, software, and operational data ("Scale IP"). Scale grants Customer a non-exclusive license to use the Scale IP in connection with this Agreement only. Customer may from time to time be required to execute a separate software subscription license agreement with Scale, its affiliate, or a third-party software provider to access relevant software applications, to the extent included hereunder and as reasonably required during the term of this Agreement.

16. Marketing and Publicity. Customer hereby grants Scale the right to use Customer's name and logo solely for Scale's marketing and promotional purposes, subject to Customer's trademark usage guidelines that are provided to Scale. Customer may reasonably request to terminate this right at any time, in part or in whole, by sending an email stating its intent to legal@scalemicrogrids.com.

17. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of California, without regard for its conflict of laws principles. Venue shall be in Sonoma County, California, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

18. Disputes. Any dispute arising from or relating to this Agreement shall first be referred to the senior management of the Parties for resolution. If the Parties are unable to resolve any such dispute within thirty (30) days after referral, then either Party may refer the dispute to a court of competent jurisdiction in Sonoma County, California. Each Party will bear its own expenses except to the extent of non-payment by Customer.

19. Further Assurances. Customer and Scale shall each at their own cost and expense cooperate with the other in the performance of each of their obligations hereunder and execute and deliver such further documents and instruments and shall take such other actions, each without unreasonable delay or condition, as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement, including without limitation as required for Scale to (i) perform the Microgrid Services, (ii) receive all benefits associated with the ownership or operation of the Microgrid, (iii) obtain financing related to the Microgrid or this Agreement (including debt, equity, tax equity, credit enhancements, hedging, or any other financial product), (iv) as otherwise required for Scale's successors, assigns, lenders, or partners to assume Scale's obligations hereunder

for purposes of enforcing this Agreement, or (v) to avoid being regulated as a utility.

20. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. The parties expressly recognize that Customer's personnel are without authorization to order extra or changed work or waive Agreement requirements.

21. Counterparts. This Agreement may be executed in any number of separate counterparts, including through the use of electronically transmitted signature pages, and each counterpart shall be considered an original and together shall comprise the same Agreement.

22. Modification. Except for modifications to the Contract Price between NTP and COD pursuant to Section 2.4 hereunder, this Agreement may be modified only by a writing signed by both Parties.

23. Full Agreement. This Agreement, together with the NDA, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter.

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STANDARD SCOPE OF WORK
[To be attached at execution]

DRAFT

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MSA Designs

[To be attached at execution]

DRAFT

PROJECT SCHEDULE

[To be attached at execution]

DRAFT