

[INSERT DATE]

PROJECT NUMBER & NAME

XXXXX

SITE ADDRESS

XXXXX

CITY LIGHT CUSTOMER

XXXXX

EFFICIENCY ENERGY DEVELOPER

XXXXX

GLOSSARY OF TERMS

“Adjusted Baseline Energy” represents what the baseline energy use would have been if the project ECMs had never been installed, under the same set of post-retrofit conditions.

“Agreement” means this Power Purchase Agreement.

“Avoided Energy Use” (for existing buildings) means the reduction in electricity use that occurred in the performance period, relative to what would have occurred if the facility had been equipped and operated as it was in the baseline period, but under performance period conditions. Unless and until City adopts another method of quantification consistent with industry best practices, City will base Avoided Energy Use for Existing Buildings on a formula in this format:

Avoided Energy Use (or “Energy Savings”) = Adjusted Baseline Energy - Performance Period Energy +/- Non-Routine Adjustments

For New Construction, City will consider the difference between the City of Seattle Energy Code target energy use (C401) and the participant’s actual energy use to be the Avoided Energy Use unless and until City adopts another method of quantification.

“Baseline Conditions” means the conditions of the existing buildings as found in the baseline period. Baseline Conditions are generally described in an Energy Audit (e.g.: ASHRAE Level II audit).

“Baseline Data” means the measurements and facts describing facility operations and design during the baseline period. This will include energy use or demand, parameters of facility operation that govern energy use or demand, and definition of Static Factors for the Site.

“Baseline Model” means the mathematical representation or calculation procedure that is used to predict the energy use in a building or facility had no ECMs been implemented. Models may be based on equations that specifically represent the physical processes, may be the result of statistical analysis of energy-use data, or other techniques City reasonably determines to be appropriate for Project purposes.

“Baseline Model Equation” means the mathematical representation or equation governing the prediction of energy use had no ECMs been implemented at the Site.

“City” means the City of Seattle, a Washington State municipal corporation, doing business by and through its Seattle City Light department (“City Light”).

“Efficiency Energy” means the calculated Avoided Energy Use harvested at the Site by the EE Developer. This is an energy efficiency resource. City Light will determine Efficiency Energy based on quantification provided by the M&V Consultant.

“Energy Conservation Measure” (“ECM”) means any type of energy conservation or efficiency energy project or activity conducted, related to the installation, repair, or replacement of energy-efficient equipment or building systems, implementation of capital projects, operational & maintenance (O&M) improvements, or new means of training or managing users of the space, intended to improve the energy productivity of or generate Efficiency Energy at the Site.

“Energy Efficiency Service Fee” (“EE Service Fee”) means the charges for Efficiency Energy the City will bill the City Light Customer based on the Avoided Energy Use at the Site.

“Efficiency Energy Developer” (“EE Developer”) means the party who enters this Power Purchase Agreement with the City for the sale of Efficiency Energy to the City from the Avoided Energy Use at the Site.

“Measurement and Verification Consultant” (“M&V Consultant”) means an independent third-party hired and selected by City that will develop and implement an approach to use data-driven models with meter data and other variables to calculate Adjusted Baseline Energy, which will be used by City Light to determine the Avoided Energy Use and Efficiency Energy at the Site. M&V Consultant will be selected by standard City procurement procedures and is subject to change if and when required by City policy or business needs.

“Measurement and Verification Plan” (“M&V Plan”) means the program’s M&V guidelines and methodology approved by City. The City intends for M&V Plan to follow industry standard practices for whole-building estimates of energy savings and non-routine adjustments, if any are needed.

“Measurement Boundary” means the boundary drawn around whole-building meters and building systems to segregate those which are relevant to savings determination from those which are not. The Measurement Boundary shall be determined by the primary utility account and corresponding interval meters, which make up at least 90% of the Site’s electricity consumption.

“New Construction” means (1) construction of a new building or structure, (2) an increase in the conditioned floor area or height of an existing building or structure, or (3) major changes in space use type such as major renovations.

“Non-Routine Adjustments” (“NRA”s) means adjustments to the Baseline Model to account for Non-Routine Events, which occurred during the baseline or Performance Period and cannot be modeled using the independent variables considered in the Baseline Model.

“Non-Routine Events” (“NRE”s) means changes in building energy use not attributable to changes in the independent variables used in the baseline model nor to the ECMs that were installed. In the case of an NRE, the Avoided Energy Use may be adjusted by making Non-Routine Adjustments.

“Participant” is the party who owns the Site, acting either through itself or through an agent with appropriate authority, such as a management or operating entity, who is the City Light customer.

“Party” or **“Parties”** means the City and/or the EE Developer.

“Performance Period” means for Existing Buildings the period of time after the EE Developer has implemented initial ECMs at the Site resulting in a reduction in monthly energy consumption of at least 10% relative to the baseline model and written approval has been provided by City. For New Construction, the performance period begins when the building is 75% occupied and written approval has been provided by City.

“Power Purchase Agreement Payment” (“PPA Payment”) means the amount to be paid to the EE Developer for delivered Efficiency Energy under the terms of this Agreement as calculated in Appendix A unless and until City determines another methodology is a better calculation of Avoided Energy Use based on its reasonable utility judgment and industry best practices.

“Power Purchase Agreement Price” (“PPA Price”) means the dollar amount per kilowatt-hour of Efficiency Energy that will be paid by the City to the EE Developer, expressed in US dollars per kilowatt-hour, for the delivery of Efficiency Energy from the EE Developer to the City at the Site under the terms of this Agreement. (See Appendix A)

“Program” means City’s Energy Efficiency as a Service Pilot Program. Components of the program include both this Agreement under which the City pays EE Developer for Efficiency Energy generated at the Site, and a separate Participation Agreement between City and Participant under which Participant pays EE Service Fees to City to receive Efficiency Energy .

“Project” means the collection of ECMs implemented at the Site by the EE Developer intended to generate Efficiency Energy throughout the Term of Agreement.

“Site” means the actual building location that the Efficiency Energy work will take place. The Site encompasses the Measurement Boundary. The Site location for this Agreement is [INSERT ADDRESS, LEGAL DESCRIPTION, PARCEL NUMBER OR OTHER SPECIFIC IDENTIFIER OR REFERENCE AND ATTACH THE SITE DETAILS AS EXHIBIT B]

“Static Factors” means energy-governing factors that are not usually expected to change (e.g., facility size, design and operation of installed equipment, number of weekly production shifts, or type or number of occupants). The associated static factors must be monitored for change throughout the reporting period.

TERMS & CONDITIONS

This Agreement is entered into by and between the Parties to implement the Program a City energy conservation program. The EE Developer is voluntarily participating in the City’s Program to sell verified Efficiency Energy to the City under the terms and conditions of this Agreement. This Program aims to mitigate the split incentive through this Power Purchase Agreement for the City to purchase the Efficiency

Energy delivered through the Project from the EE Developer and through a Participation Agreement to bill the City Light Customer for the Efficiency Energy generated at the Site.

This Program requires both execution and implementation of this Power Purchase Agreement with the EE Developer at the Site and execution and implementation of a separate Participation Agreement between City Light and Participant by which Participant consents to be billed an Energy Efficiency Service Fee based on the Efficiency Energy generated at the Site. For avoidance of doubt, the Participant is not a party to this Agreement and the EE Developer is not a party to the Participation Agreement. Efficiency Energy will be determined by the City based on information provided by the M&V Consultant, operating under a contract with the City and subject to the City's approval.

In consideration for EE Developer's participation and full performance in the Program, both parties agree to the following:

- 1. Term of Agreement.** This Agreement shall become effective on the date the Agreement is signed by both Parties (execution date) and shall remain in effect until 01/22/2040 unless terminated earlier by the terms of this Agreement. The execution date must be prior to ECM equipment being ordered for projects intending to use existing building baseline methodology. Projects using new construction baseline methodology must have an execution date prior to 50% completion/construction of project.
- 2. Entire Agreement.** This Agreement shall incorporate, as terms and conditions to this Agreement only, identified attachments, appendices, M&V Plan, and the Program Manual as it may be updated or amended during the term of this Agreement. The Agreement, including the incorporated documents, contains the entire Agreement between the Parties and supersedes any and all prior written and/or oral agreements. In the event of any conflict or inconsistency between Program Manual and the Agreement, the Agreement will control.
- 3. Voluntary Participation/Assumption of Risk.** The EE Developer is fully aware of the risks and hazards connected with the activities of implementing ECMs, and EE Developer is aware that such activities include the risk of injury and even death. EE Developer hereby elects to participate voluntarily in the Program knowing that the activities may be hazardous to EE Developer's property and person and the property and person of third parties, including the Participant and residents or tenants of the Site. EE Developer will inspect the Site before conducting any work and will only implement the ECMs on the Site if EE Developer determines that the Site is suitable for the ECMs to be implemented. EE Developer voluntarily assumes full responsibility for and waives all claims against City arising from any loss, property damage, or personal injury, including death, which may be sustained by EE Developer, Participant, or third parties, or any loss or damage to property and Site, as a result of being engaged in such activities, to the fullest extent allowed by law.
- 4. Payment.** The EE Developer shall deliver Efficiency Energy to the City in exchange for PPA payment at the PPA Price as identified in Appendix A.
 - a. Performance Guarantee.** Upon completion of the first year in the performance period and for the rest of the contract period, the Avoided Energy Use for the past 12 months (determined on a rolling basis) shall be at least 12.5% of the baseline energy use for the baseline used during the time of recording of the savings (Non-Routine Adjustments will be applied retroactively). If the City determines that the Avoided Energy Use is less than 12.5% of the baseline energy use ("Performance Deficiency"), EE Developer will be in breach of this Agreement under Section 19(a). City will deem the Performance Deficiency and breach cured if during the cure period the Project's Avoided Energy Use for the past 12 months (determined on a rolling basis) returns to be at least 12.5% of the baseline energy use, for the baseline used during the time of recording of the savings.

- b. **Payment Amount.** Determination of the amount of Efficiency Energy, and thus PPA Payment, will remain the sole discretion of the City. City will use the services of the M&V Consultant, or other provider reasonably determined by City to provide the same level of relevant expertise to develop and implement a Baseline Model for the Site and to determine the Avoided Energy Use and Efficiency Energy each payment cycle. As this is a pilot, program evaluations may be conducted that recommend a change in the methodology used to calculate Avoided Energy Use and may be subject to change to align with industry best practices. City will notify EE Developers of change, and provide a 60-day comment period prior to adoption. For each billable kilowatt-hour of Efficiency Energy measured by the M&V Consultant and confirmed by City, the City shall pay the EE Developer the PPA Payment Amount as calculated in Appendix A for each billing cycle. If the Avoided Energy Use calculated for a billing cycle is zero or less than zero, this will result in no Efficiency Energy payment for that cycle or debit for the EE Developer. The EE Developer will only receive PPA payments for Efficiency Energy generated within the Measurement Boundary. The equations that govern the Baseline Model will be provided to the EE Developer in writing by the City or its M&V Consultant and will be used to quantify Avoided Energy Use and Efficiency Energy. The City, using the services of the M&V Consultant, has sole discretion to modify the Baseline Model as needed to assure verified Efficiency Energy savings at the Site. City will notify the EE Developer of all modifications and provide a 60-day comment period prior to adoption. All adjustments are subject to City Light approval. A record, log, and revision history of this Baseline Model will be maintained by the City to reflect the nature and timing of any permanent Non-Routine Adjustments made throughout the Term of the Agreement; this will be provided to the EE Developer upon request. Non-Routine Events flagged as significant by the City, using the services of the M&V Consultant, will have NRAs made to the Avoided Energy Use calculations.
- c. **Dispute Process.** If the EE Developer believes there is an error in the detailed summary of the Avoided Energy Use provided by the City for a particular billing cycle, then EE Developer shall notify the City of the potential error (including a detailed description of the nature and effect of the error), within thirty (30) days after receiving the detailed summary for that billing cycle. Failure to provide notice to the City will waive the EE Developer's ability to dispute that particular PPA Payment. The City will review the Avoid Energy Use calculation and claimed discrepancy and notify the EE Developer whether any adjustments to the Avoided Energy Use are needed. Any payment adjustments made as result of this investigation will be retroactively corrected on subsequent EE Developer payments. If the Parties are unable to resolve the dispute within sixty (60) days after their initial notification, Parties will attempt to resolve the dispute through mediation. If the dispute is not resolved by mediation either applicable Party may proceed to seek any remedy that may be available to that Party at law or in equity (provided that any such remedies shall be limited as provided in this Agreement).
- d. **Taxes.** The EE Developer shall be responsible for payment of any applicable federal, state or local income and corporate tax liability associated with the EE Developer's receipt of the City's PPA Payment for efficiency energy. This PPA applies to only the EE Developer and the ECMs implemented at the Site. Should the EE Developer wish to enroll additional Sites in the Program, the EE Developer must separately apply for those Sites in accordance with whatever program requirements may be in place at that time. City will evaluate each Program application individually and this Agreement does not guaranty any preference in future City Light program applications.

5. Adjustments & Process Requirements.

- a. **Program Requirements & Manual.** EE Developer will implement ECMs at the Site in accordance with all requirements set out in the Program Manual and M&V Plan.

- b. **Timeline.** Once the Performance Period has begun, the City will pay the EE Developer for delivered Efficiency Energy at the PPA Price as defined in Appendix A. City intends to follow the following steps to determine and provide payment, subject to change, on written notice to EE Developer based on City's reasonable determination of business needs:
- i. End of Participant billing period.
 - ii. City will provide information to M&V Consultant regarding Baseline Energy Use and Avoided Energy Use.
 - iii. M&V Consultant will provide City a detailed summary of Avoided Energy Use based on this information.
 - iv. City will verify the Avoided Energy Use and Efficiency Energy, calculate PPA Price, and make payment to EE Developer.
- c. **Non-Routine Events.** Non-Routine Events are changes in building energy use not attributable to changes in the independent variables used in the Baseline Model nor to the ECMs that were installed at the Site. Because these changes are unrelated to the ECMs implemented as part of the Project, they are not to be considered in the quantification of Efficiency Energy, and the Avoided Energy Use may be adjusted by making Non-Routine Adjustments. The EE Developer and Participant will be responsible for reporting potential Non-Routine Events as soon as they arise, or at a minimum, in Quarterly Reports. The EE Developer shall act in good faith to assist the City in investigating possible NREs. City, using M&V Consultant as appropriate, will be responsible for identifying Non-Routine Events (through review of Quarterly Reports, inspection of energy use data, and post-retrofit change detection models). City, using M&V Consultant may collect additional data through follow-up phone interviews, requests for information, observation of unexpected energy use patterns, review of additional project data, periodic site visits, and/or other methods, as appropriate. For existing buildings, City will use standard practice statistical and engineering methods to determine how and when the identified NREs have affected the facility's energy use. If City determines the Project is New Construction (including change of use type and major renovations), City will use the then-current Seattle Energy Code and Code Official guidance to identify and perform any adjustments to the facility's code baseline. For detailed information on how NREs will be identified and tracked, or for a list of typical Non-Routine Events, please see the Program Manual.
- d. **Non-Routine Adjustments.** Non-Routine Adjustments shall be made on an annual basis, when necessary, to the Baseline Model or Adjusted Baseline Energy to account for significant Non-Routine Events which have occurred. City, after consulting with the M&V Consultant as appropriate, will apply Non-Routine Adjustments City determines in its sole discretion to be necessary to remove the influence of Non-Routine Events in the Avoided Energy Use calculation and quantification of Efficiency Energy. City will notify the EE Developer of any Non-Routine Adjustments and allow a 30-day comment period prior to implementation. All adjustments are subject to Seattle City Light approval. Until Non-Routine Adjustments are validated and finalized, City will continue to bill the Participant and make PPA Payments to the EE Developer based on the current Baseline Model at the time of billing. Retroactive adjustments shall be made on a subsequent billing cycle. City may update procedures around Non-Routine Adjustments at any time during the Program to reflect new industry best practices.
- e. **Validation.** City retains the right and responsibility to determine Avoided Energy Use and Efficiency Energy at the Site. City will use the M&V Consultant or other appropriate resources in making these determinations. To the extent the M&V Consultant provides energy calculations and modelling related to the Site, City may at its discretion evaluate and validate the M&V Consultant's

work including, but not limited to: Avoided Energy Use calculations, Baseline Model, and Non-Routine Adjustments. Should evaluation and validation find that the amount of Efficiency Energy delivered by the EE Developer at the Site requires adjustment, City will direct M&V Consultant to make these adjustments. If these adjustments result in an increase or decrease of Efficiency Energy delivered at the Site, payment adjustments will be reflected in an increase or decrease in subsequent EE Developer payments to reflect the value of Efficiency Energy actually delivered to City.

6. Site Verification & Data Collection.

- a. City must be granted permission and access to the Site and Site data to perform ECM and Site evaluations for the Program, including baseline period data. The City may, at its discretion, request data via requests for information or perform pre- and post- installation monitoring and visual verification of the implemented ECMs, in order to determine the energy savings, and if necessary, to verify EE Developer's compliance and performance obligations under this Agreement. The EE Developer shall act in good faith to assist the City in obtaining access to the requested data, or Site. The EE Developer understands that the scope of any visual verification and review performed by the City does not include any kind of safety, code, or other compliance review or inspection, and is for administrative and verification purposes only. If City and M&V Consultant are unable to access the Site due to failure by EE Developer or Participant to grant permission or otherwise, City will deem the Site no longer practical to generate Efficiency Energy and with thirty (30) days' written notice to EE Developer, this Agreement will terminate without further liability or obligation to either Party.
- b. EE Developer acknowledges that the City intends to collect and compile certain information, including, but not limited to, building design specifications, submetering data, occupancy data, systems operations data, invoices, ECM descriptions, status for purposes of program evaluation, and data for preparing case studies under this Program.

7. Efficiency Energy Developer Protocols. This Agreement is contingent on EE Developer providing verifiable Efficiency Energy to City. Any action taken by EE Developer that City determines was intended to or could mislead an Efficiency Energy purchaser will be a material breach of this Agreement and will subject EE Developer to contract liability and other remedies available at law. Without limitation, EE Developers found to be either: (1) intentionally inflating the incidence of NREs in a manner that would be financially favorable to the EE Developer; or (2) disguising the impact of NREs to resemble expected energy savings will be deemed to have breached this Agreement.

- a. To minimize the possibility of misleading reports of Efficiency Energy:
 - i. EE Developer shall not systematically target, recruit, or enroll Participants who expect to experience a decline in energy consumption due to Non-Routine Events within the coming twelve months; and
 - ii. EE Developer shall not misrepresent the scope of ECMs in such a way as to disguise energy use reduction resulting from Non-Routine changes as Avoided Energy Use attributable to ECMs; and
 - iii. EE Developers shall not install secondary heating sources or power generation fueled by non-metered fuels;
 - iv. EE Developer shall ensure that all reporting related to Efficiency Energy is correct and shall promptly inform City if EE Developer becomes aware that any information provided by EE Developer to City is untrue or could mislead City about the amount of Efficiency Energy Delivered.

- b. While it is anticipated that EE Developers will participate in the pilot in good faith, these requirements will ensure the accurate evaluation of a framework designed to unlock deeper energy efficiency in commercial buildings and help EE Developers overcome the split incentive.
 - c. Methodology for detecting fraudulent NRE patterns: if the frequency of NREs which create reductions in Avoided Energy Use cannot be explained by random occurrence within Project (i.e. a pattern of NREs triggers concern), the Project will be examined by the City to assess whether the NREs are statistically indicative. City reserves the right to randomly inspect the Site to verify that ECMs reported by the EE Developer have been installed and properly functioning.
 - d. If at any time, the City determines the EE Developer has delivered unverified or misleading Efficiency Energy, by negligently or intentionally inflating the incidence of Non Routine Events in a manner that would be financially favorable to the EE Developer, or disguising the impact of Non Routine Events to resemble expected energy savings, this shall constitute a material breach of this Agreement. If in City's sole discretion this material breach was unintentional and curable, City will provide opportunity to cure under Section 19(a) of this Agreement. If City does not determine the material breach to be unintentional or if the EE Developer fails to cure the breach to the satisfaction of the City within thirty (30) days of receiving notice, City may in its sole discretion terminate the PPA with thirty (30) days' written notice to the EE Developer, require repayment of City payments for Efficiency Energy claimed by EE Developer but not verified by City, and seek any other remedies available at law or equity.
- 8. On-Site Generation.** EE Developer must provide the City thirty (30) days' written notice before installing any energy generation equipment at the Site, including but not limited to solar panels, cogeneration or geothermal energy equipment. This notice must contain enough information for City to determine how the amount of energy produced at the Site may be calculated. Any on-site generation must be metered with a revenue grade meter and data made available to the City. City will remove this produced energy from the Site's Avoided Energy Use methodology. City will not pay the EE Developer for this produced energy through the PPA Payment and will not bill the Participant for this produced energy through the EE Service Fee. If City reasonably determines on-site generation will make calculation of the Avoided Energy Use impractical or impossible, City may deem this a breach and terminate this Agreement under Section 19(a). Any form of on-site generation at the Site must be City sub-metered under applicable law and City requirements. If Participant will be participating in the installation of on-site generation equipment, notice under this section must be provided by either EE Developer or Participant. Installation of on-site generation equipment without prior notice to City will be a material breach of this Agreement.
- 9. Participant Permission Required.** City is not acting as an agent or representative of Participant or EE Developer and is not a party to any agreements between Participant and EE Developer that have been executed or will be executed related to the Site. The City is not an intermediary or agent for the EE Developer or Participant. EE Developers are private businesses not affiliated with the City and are hired at the sole discretion of the Participant. The City makes no recommendations on suitability of any EE Developer and will not defend, favor, or be held responsible for any disputes that arise between Participant and EE Developer. The EE Developer must obtain written permission from the Participant for all work associated with implementation of ECMs and continuing use of the Site for generation of Efficiency Energy. If Participant revokes permission for EE Developer to use the Site at any time, this Power Purchase Agreement will terminate without liability to either Party and City will cease paying EE Developer for Efficiency Energy.
- 10. Project Work Selection, Operation and Maintenance.** Proper selection, design, installation, and commissioning of the ECMs or equipment is the sole responsibility of the EE Developer. Neither the City nor any of its departments, subsidiaries, affiliates and officers, directors, employees, agents,

representatives or volunteers are responsible for determining whether the design, engineering and installation of the ECMs are proper or compliant with any particular laws, codes, or industry standards. EE Developer is solely responsible for all aspects related to the ECMs, code compliance, and project work at the Site, including but not limited to: selecting the equipment; selecting contractors to perform any Project work; inspecting the Project work and the equipment; ensuring that the equipment is in good working order and condition; ensuring that the equipment is of appropriate manufacture, design specifications, size and capacity, and that the equipment and Project are safely and properly installed and suitable for EE Developer's purposes; and otherwise performing and meeting all Program requirements and applicable laws, regulations and codes. The EE Developer acknowledges and agrees the City is not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, any equipment that the EE Developer selected, purchased, replaced, retrofitted and/or installed under this Program.

- 11. Workforce Development.** EE Developers in the Program will need to report data and information regarding workforce and Women and Minority Owned Businesses (WMBE) utilization as specified in the Program Manual.
- 12. Public Records Act Compliance.** The City may release documents and records related to this Power Purchase Agreement when the City determines it is required to do so by Washington's Public Records Act, RCW Chapter 42.56, or other disclosure laws. Additionally, as a party contracting with a governmental entity, EE Developer may have obligations under disclosure laws. The EE Developer is responsible for understanding and complying with any applicable disclosure requirements.
- 13. Compliance with Laws.** EE Developer represents and warrants that the EE Developer, the EE Developer's agent and employees, or any contractors retained to install or maintain the equipment, are familiar with, and at all times will comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations, Program Manual, Guidelines and other Program policies and requirements including, but not limited to, those pertaining to the implementation of ECMs at the Site. Efficiency Energy harvested at the Site under this Agreement are unique energy savings and cannot be sold twice under any other Agreement.
- 14. The City of Seattle Disclaimer.** THE CITY DISCLAIMS, ANY AND ALL IMPLIED OR EXPRESS WARRANTIES, including without limitation, ANY REPRESENTATIONS OR PROMISES WITH RESPECT TO THE ECMs, MATERIALS OR LABOR REQUIRED FOR THE implementation OF THE ECMs ON THE City Light CUSTOMER 'S SITE, OR THE COST OF SUCH equipment, MATERIALS AND LABOR, OR ANY ENERGY SAVINGS THAT MAY ACCRUE FROM THE IMPLEMENTATION OF SUCH ECMs. THE CITY MAKES NO IMPLIED OR EXPRESS WARRANTIES REGARDING THIS PROGRAM, ITS POLICIES, PROCEDURES, ITS ADMINISTRATIVE VERIFICATIONS, AND / OR ANY OWNER INSTALLED equipment, OR equipment INSTALLED BY A CONTRACTOR, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS OF SUCH equipment FOR ANY PARTICULAR PURPOSE. Any required maintenance, repair or replacement of the equipment shall be the sole responsibility of, and at the expense of the EE Developer. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF THE EE DEVELOPER'S PARTICIPATION IN THE PROGRAM.
- 15. Indemnity/Limitation of Liability.**
 - a. EE Developer acknowledges and agrees: (i) participation in this Program is voluntary; (ii) that the City is providing payments for Efficiency Energy for conservation purposes only; and (iii) that the City assumes no liability for: EE Developer's decision to enter into this Agreement; EE Developer's decision to implement ECMs at the Site; the ECMs selected by EE Developer; any third parties selected by EE Developers to implement such ECMs; any promises or representations that might be

made between EE Developer and the Participant, operator, or occupants; or any disputes arising out of installation, repair or replacement of the equipment installed as part of this Project.

- b. To the fullest extent allowed by law, EE Developer agrees to release, defend, indemnify, and hold harmless the City, its departments, subsidiaries, affiliates and officers, directors, employees, agents, representatives or volunteers, from any and all claims, losses, harm, costs, liabilities, damages and expenses (including attorney's fees) of any nature whatsoever, or allegations thereof, arising directly or indirectly out of this Agreement, including but not limited to claims related to any method Participant may use to recoup Energy Efficiency Service Fee charges (such as requiring Site tenants to pay all or a portion of those charges), claims brought by the Participant related to this PPA or Participant's Participation Agreement or the PPA, claims related to the acts or omissions of third parties selected by EE Developer to perform work related to the implementation of this Agreement or at the Site, and claims related to installation, maintenance and repair of ECMs intended to generate Efficiency Energy, except to the extent that any such claims, losses, harm, costs, liabilities, damages and expenses are caused by the City's sole negligence or willful misconduct. EE Developer's indemnity, protection, and hold harmless obligations shall include any demand, claim, assignment, suit or judgment for damages to property or injury to or death of persons, or for any incentive payment by the City, or for any payment made under or in connection with any Workers' Compensation law or under any plan for employees' disability and death benefits. The EE Developer expressly waives by mutual negotiation, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act of any jurisdiction, which would otherwise be applicable in the case of such claim.
- c. To the fullest extent allowed by law, the City's liability shall be limited to paying only the approved payments in accordance with this Power Purchasing Agreement. The City, and its departments, affiliates and officers, directors, employees, agents, representatives or volunteers shall maintain no liability to the EE Developer or any other party for any other obligation under the Program. In no event, whether as a result of breach of contract, tort, or any other theory of recovery shall the City be liable in connection with this Power Purchase Agreement or the Program for any or all special, indirect, incidental, penal, punitive or consequential damages of any nature.

16. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. Any action at law or in equity to enforce the terms and conditions of this Agreement shall be brought solely in a court in King County Superior Court.

17. Survivability. The provisions of Sections 3, 6, 7, 10, 12, 13-16 shall survive the expiration, termination, or completion of the EE Developer's participation in the Program.

18. Severability. If any provision of this Power Purchase Agreement, in whole or in part, is deemed invalid by any court or administrative body of competent jurisdiction, then these provisions shall be construed as reformed to the extent necessary to render such provision valid, and the remaining provisions shall remain in effect as reformed. The EE Developer and the City agree that any and all provisions of these Terms and Conditions are severable.

19. Termination.

- a. If through any cause the EE Developer fails to comply with the obligations under this Agreement or fails to conform with the requirements of the Program Manual, EE Developer will be in breach of Agreement, and the City shall have the right to terminate this Agreement by giving written notice to the EE Developer of such termination. City will confer with EE Developer regarding the notice of termination, the identified breach, and what, if any, action would cure the breach. If in City's reasonable judgment the breach is susceptible to being cured, City will identify what steps, if any, EE

Developer must take to cure the default. City will set the length of any cure period in its reasonable discretion, but in no circumstance will the cure period be less than thirty (30) days or more than one hundred eighty (180) days. City may in its reasonable discretion extend such time to cure. If EE Developer fails to cure, then the City shall terminate this Agreement and cease paying EE Developer for Efficiency Energy. PPA Payments will be paid in full up to the date of the initial breach event and not after. If any PPA payments were made after the initial breach event date, this amount will be owed for full reimbursement to the City from the EE Developer. If EE Developer cures the breach to City's satisfaction in the cure period provided, City will rescind its notice of termination.

- i. If the breach is not cured within the cure period allowed by City, City may, in its sole discretion, permanently reduce PPA Payments to an amount determined by City to reflect decreased value of energy savings at Site rather than terminating the Agreement.
 - ii. If the City allows a cure period longer than thirty (30) days, City may reduce PPA Payments during the cure period to an amount determined by City to reflect decreased value of energy savings at Site until the breach has been cured.
 - iii. If City determines that EE Developer has committed multiple breaches of this Agreement, City need only provide one written notice and one cure period for EE Developer to address all breaches.
- b. If the Site is sold to a new owner who fails to enter a Participation Agreement for the purchase of Efficiency Energy at the Site within thirty (30) days of close of sale, this Agreement will terminate without liability to either party and City will cease paying EE Developer for Efficiency Energy.
 - c. In the event that the Agreement is terminated within the first five (5) years from the execution date, the EE developer may be eligible for an energy efficiency incentive from City Light. This incentive would be earned through current City Light conservation energy program offerings at the time of termination. Any Energy Efficiency incentive provided by City Light standard programs is subject to eligibility, verification, evaluation, and will exclude efficiency energy already paid for under this Agreement.
 - d. Notwithstanding any other provision of this Agreement, the EE Developer shall have the right at any time to terminate this Agreement in its entirety without cause on sixty (60) calendar days' written notice.

20. Force Majeure. If any event or circumstances outside of the Parties control arises which makes it impossible or unlawful for either or both Parties to fulfil their contractual obligations under this Agreement, then this will constitute a termination of Agreement with no liquidated damages.

21. Assignment. Neither party may assign its rights and obligations in and under this Agreement without first obtaining prior written consent of the other party.

22. Amendments. If either party desires a change in this Power Purchase Agreement an amendment must be requested through written notice. Changes to this Power Purchase Agreement will only be effective if set forth in a document signed by authorized representatives of both the City and the EE Developer.

23. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and creates no rights enforceable by any entity other than City and EE Developer. EE Developer is not the third-party beneficiary of any other agreement entered into by City, including the Participation Agreement with the Participant who owns or operates the Site.

24. Non-Waiver. Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

- 25. EE Developer as Participant.** EE Developer may be the Participant for this Project. In that case, EE Developer must comply with all terms and conditions of this Agreement and the Participation Agreement in which it is the Participant. If at any time, EE Developer breaches the Participation Agreement through failure to pay amounts owed to City or otherwise, that shall also be a material breach of this Agreement.
- 26. Construction.** The headings contained in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. Words used in the singular included the plural and words used in the plural include the singular.
- 27. Notices** Unless otherwise provided in this Agreement, all notices, demands, requests, approvals or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be emailed, hand-delivered, mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or delivered by overnight courier addressed as follows:

Email: SCLenergyadvisors@seattle.gov
 Mail:
 SCL Energy Advisors
 Seattle City Light
 700 5th Avenue, Suite 3200
 Seattle, WA 98124

By signing this Agreement, I acknowledge that I have fully read, understand, and agree to be bound by the above Terms and Conditions of this Power Purchase Agreement for participation in the Seattle City Light Energy Efficiency as a Service Pilot Program.

I certify or declare, under penalty of perjury, under the laws of the State of Washington that I am the Seattle City Light Program Efficiency Energy Developer, or the corporate officer, agent or representative of the business entity listed below, who is authorized to execute and agree to the terms and conditions of this Power Purchase Agreement for participation in the Seattle City Light Energy Efficiency as a Service Pilot Program.

Signature of Authorized Signer of Program Efficiency Energy Developer: _____ Date:

Printed Name of Authorized Signer of Efficiency Energy Developer: _____

Title: _____

City of Seattle, City Light Department:

By: _____ Date: _____

Email: _____

Phone: _____

Appendix A. Contract Amounts for PPA

The PPA Payment shall be calculated according to the following formula:

$$\text{PPA Payment} = \text{PPA Price} \times \text{Efficiency Energy}$$

The PPA Price is established upon Agreement execution and differentiated based on participant's project type, customer classification of the customer's primary account at the Site, and Site location.

1. Initial PPA Price. The following is how the PPA Price will be determined for selected:

- a. Retrofit-High Demand Service.** The initial PPA Price for Retrofit projects, that fall under the High Demand General Service (HDS) rate structure, will be determined by analyzing the Site's baseline period's billing prior to contract execution to determine the total kWh consumed during on-peak and off-peak hours. The volume of kWh on peak and off peak will be converted to the % of total kWh for the billing periods included in the baseline period. The on peak % will be applied to current on-peak rates and the off peak % to current off-peak rates. These totals will be combined and the average volumetric price will be used to represent a weighted-average kWh pricing. The PPA Price will be this weighted-average price multiplied by 0.93.

$$\text{Initial PPA Price} = (\% \text{ On-Peak} * \text{On-Peak HDS rate} + \% \text{ Off-Peak} * \text{Off-Peak HDS rate}) * 0.93$$

- b. Retrofit-Large General Service.** The initial PPA Price for Retrofit projects, that fall under the Large General Service rate structure, will be determined by analyzing the Site's baseline period's billing prior to contract execution to determine the total kWh consumed during on-peak and off-peak hours. The volume of kWh on peak and off peak will be converted to the % of total kWh for the billing periods included in the baseline period. The on peak % will be applied to current on-peak rates and the off peak % to current off-peak rates. These totals will be combined and the average volumetric price will be used to represent a weighted-average kWh pricing. The PPA Price will be this weighted-average price multiplied by 0.93.

$$\text{Initial PPA Price} = (\% \text{ On-Peak} * \text{On-Peak LGS rate} + \% \text{ Off-Peak} * \text{Off-Peak LGS rate}) * 0.93$$

- c. Retrofit-Medium General Service.** Retrofit projects that fall under the Medium General Service rate structure at time of agreement execution will have the following initial PPA Price.

Customer Location	2021 PPA Price
Non-Downtown Network	\$0.0747/kWh
Downtown Network	\$0.0918/kWh

- d. Retrofit-Small General Service.** Retrofit projects that fall under the Small General Service rate structure at time of agreement execution will have the following initial PPA Price.

Customer Location	2021 PPA Price
Non-Downtown Network	\$0.0979/kWh
Downtown Network	\$0.0979/kWh

- e. **New Construction-Large General Service.** New Construction projects that fall under the Large General Service rate structure at time of agreement execution will have the following initial PPA Price.

Customer Location	2021 PPA Price
City Network	\$0.0754/kWh
Non-Downtown, Non-City Network	\$0.0813/kWh
Downtown Network	\$0.0863/kWh

- f. **New Construction-Medium General Service.** New Construction projects that fall under the Medium General Service rate structure at time of agreement execution will have the following initial PPA Price.

Customer Location	2021 PPA Price
Non-Downtown Network	\$0.0739/kWh
Downtown Network	\$0.0904/kWh

- g. **New Construction-Small General Service.** New Construction projects that fall under the Small General Service rate structure at time of agreement execution will have the following initial PPA Price.

Customer Location	2021 PPA Price
Non-Downtown Network	\$0.0979/kWh
Downtown Network	\$0.0979/kWh

2. **PPA Price Annual Adjustment.** An escalator of 2.0% will be applied to the PPA Price every December to establish the PPA Price for the subsequent year