

**PERFORMANCE GUARANTEE CONTRACT
BY AND BETWEEN
THE LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
AND
ENGIE SERVICES U.S. INC.**

Contract for Performance Guarantee and Parameters and Energy Output Data for School Sites

This Contract for Performance Guarantee and Parameters and Energy Output Data for Sites (“**PeGu Contract**”) dated _____, 202__ (“**Effective Date**”), is entered into by and between **ENGIE Services U.S. Inc.** (“**Provider**”), and **Livermore Valley Joint Unified School District**, a California school district (“**District**” or “**Customer**”). In this PeGu Contract, Provider and Customer are referred to individually as a “**Party**” and collectively as the “**Parties.**”

Recitals

WHEREAS, the Customer and the Provider entered into a Contract for Audit, Design and Construction of District-Wide Energy Conservation Measures (“**ECM Contract**”) pursuant to which Provider has designed and constructed solar system(s) for the production of energy for the District’s use; and

WHEREAS, Provider and Customer desire to enter into an agreement pursuant to which Provider will guarantee annual energy generation by the System; and

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, Provider and Customer agree as follows:

1. Defined Terms.

- 1.1. **Actual Generation** means, for each Guarantee Period during the Term, the System’s alternating current or “AC” electricity production in kilowatt-hours (“**kWh(s)**”) as measured pursuant to the provisions and formulas herein under “Guaranteed Payment.”
- 1.2. **Avoided Energy Price per kWh** means the amount that the Customer will be paid for each kWh as set out in **Attachment A: Avoided Energy Price.**
- 1.3. **Commissioning Date** means the date the System is capable of commercial deliveries of energy to the full extent of its designed capacity and commences delivery of energy for sale or use.
- 1.4. **Customer Responsibilities** shall have the meaning set forth herein.
- 1.5. **Data Acquisition System or DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a fifteen (15) minute average basis at the Sites: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m²).
- 1.6. **Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours set forth in the **Attachments A and B** of this PeGu Contract as further documented based on as-built documents at COD.
- 1.7. **Force Majeure** means the same as that term is defined in the ECM Contract.
- 1.8. **Guaranteed Level** means ninety-five percent (95%) of the Expected Energy for a Guarantee Year for specified System(s).
- 1.9. **Guarantee Year** means each successive twelve (12) month period during the Term commencing on the first day of the Term.
- 1.10. **Kilowatt-hour or kWh** means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of the Revenue Meter.
- 1.11. **Operations & Maintenance Contract (“O&M Contract”)** means that certain Operations & Maintenance Contract executed concurrently herewith between District and Provider.
- 1.12. **Performance Guarantee Start Date** means the date that the Performance Guarantee begins, which shall be the first day of the month immediately following the date that the Project (all Sites) have been

accepted by the District. The Parties shall agree on the Performance Guarantee Start Date when the Project has reached Completion and shall indicate the same via an amendment to the PeGu Contract in writing.

- 1.13. **PVsyst** means the software program utilized by Provider to predict the amount of energy a Solar Power System will produce in an average year which uses either measured data or typical meteorological year files from NREL.
- 1.14. **Revenue Meter** means the principal meter of a given System from which energy output is read and documented.
- 1.15. **SEMMY** or Simulated Energy in a Measured Meteorological Year, means, with respect to any Guarantee Period, Year 1 AC Energy output of the System simulated by PVsyst using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.
- 1.16. **SETMY** or Simulated Energy for a Typical Meteorological Year, means the Year 1 AC Energy output of the System simulated by PVsyst using average hourly irradiance, wind speed, and air temperature data contained within the Weather File. The model representing SETMY shall be updated to reflect the system as built.
- 1.17. **Site(s)** means the real estate where the System and any support structure are located including any building and building roof that touch or support the System.
- 1.18. **System** means Customer's photovoltaic system located at the Site(s) and purchased from Provider.
- 1.19. **Subcontractor** means, any person or firm who contracts with Provider or with any contractor of any tier operating under a contract with Provider to provide or furnish any supplies, materials, equipment, or services of any kind, whether design, construction, service, or otherwise, for the System.
- 1.20. **Term:** The term is for five (5) years and begins on the Performance Guarantee Start Date. The termination provisions in the Operation & Maintenance Agreement between the Parties may alter the enforceability of the PeGu Contract, as indicated in those termination provisions. Any extension of the Term shall be subject to the mutual agreement of the Parties.
- 1.21. **True-up Period** means the initial two (2) year and following three (3) year periods during the Term commencing on the first day of the Term.
- 1.22. **Weather Adjustment** means the method for reconciling expected kWh during a typical weather year with the actual meteorological conditions measured on-site, pursuant to the provisions and formulas herein under "Guaranteed Output Calculations."
- 1.23. **Weather File** means the following typical meteorological year data set, which contains average hourly values of measured solar radiation, temperature, and wind speed: _____ NREL TMY3.

2. **Guaranteed Output Calculations.**

- 2.1. Provider shall calculate the Annual Deficit for each Guarantee Period during the Term:
Annual Deficit = (Expected Energy x Guarantee Level) x Weather Adjustment - Actual Generation
- 2.2. Where "Weather Adjustment" means the following ratio:
$$\frac{\text{Simulated Energy for a Typical Meteorological Year (SETMY)}}{\text{Simulated Energy in a Measured Meteorological Year (SEMMY)}}$$

3. **Guarantee Payment.**

- 3.1. At the end of each True-up Period:
 - 3.1.1. if the \sum Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the product of (i) the Annual Deficit and (ii) the Avoided Energy Price per kWh for each Guarantee Year, with each product then aggregated for the Guarantee Years comprising such True-Up Period ("**Guarantee Payment**").
 - 3.1.2. Provider shall, by invoice, promptly notify Customer of any Guarantee Payment due. A Guarantee Payment shall be payable within thirty (30) days of the date of such invoice.
 - 3.1.3. Provider shall provide Customer with a report detailing the calculations set forth in the "Guaranteed Output Calculations" and the "Guarantee Payment" Sections. This report shall contain sufficient information for the Customer to be able to determine the accuracy of Provider's conclusion as to the amount, if any, of Guarantee Payment.

- 4. Actual Generation Measurement.** The process for measuring Actual Generation for each Guarantee Period shall be:
- 4.1. **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output provided by the DAS to calculate the Actual Generation for such Guarantee Year.
 - 4.2. **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the other Party of the scheduled calibration date and time no less than thirty (30) days prior, and shall provide the Customer written proof of calibration or replacement.
 - 4.3. **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation shall be adjusted to compensate for such lost data, which shall be Provider's sole liability, and Customer's exclusive remedy, for any Guaranteed Output arising from any equipment failure or lost data relating to the DAS:
 - 4.3.1. In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
 - 4.3.2. In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. In the event that data from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVsyst. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Year.
- 5. Guarantee.**
- 5.1. Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in the ECM Contract, into which this Performance Guarantee Standard Terms ("**PeGu Contract**") is incorporated, shall be not less than the product of the Guaranteed Level and the Expected Energy, as adjusted for measured meteorological conditions per the Weather Adjustment as defined herein.
- 6. Compensation.** Compensation to Provider shall be paid annually within thirty (30) days of receipt of Provider's invoice. The fee for the annual Services is set forth in the Table below. The M&V Services Fee will be mutually agreed upon if the Term is extended beyond five (5) years.

Year	M&V Services Fee
1	\$5,656
2	\$5,825
3	\$6,000
4	\$6,180
5	\$6,365

- 7. Customer Responsibilities.**
- 7.1. Throughout the Term, and as conditions to the obligations of Provider hereunder, Customer shall:
 - 7.1.1. Not be in breach of any Customer obligations under the ECM Contract;
 - 7.1.2. Grant reasonable access to the System by Provider personnel and representatives;
 - 7.1.3. Insure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications; and
 - 7.1.4. Not modify, alter, damage, service, shade, or repair, without Provider's prior written approval, any part of the System, the supporting structure for the System (including building roof, if applicable),

or the associated wiring.

8. Customer's Failure to Uphold Responsibilities.

- 8.1. Provider's obligations under this PeGu Contract shall be suspended for the duration of Customer's failure to satisfy one or more of Customer Responsibilities as indicated herein. Provider shall promptly notify Customer of any such failures ("**Out of Compliance Letter**"), but in no case later than seventy-two (72) hours after notice of any alleged failure of Customer to satisfy one or more of the Customer Responsibilities. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("**In Compliance Letter**") that Customer is complying with Customer Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter ("**Noncompliance Period**"), Provider shall have no liability under this PeGu Contract. Each month in which there is a Noncompliance Period and any Actual Generation in such month(s) shall be disregarded in the calculation of Annual Deficits or Annual Surpluses as indicated herein and the Expected kWh for any Guarantee Year in which there is a Noncompliance Period shall be reduced by an amount proportionate to the period so disregarded and to the actual or reasonably estimated meteorological data during such period.
- 8.2. Any dispute as to whether Customer in fact has failed to satisfy one or more of Customer Responsibilities shall be resolved pursuant to the Dispute provisions below.

9. Adjustment of Expected Energy.

- 9.1. If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy shall be adjusted correlatively for the period of such change:
- 9.1.1. There is structural failure in a building supporting the System;
- 9.1.2. The equipment, including any modules, inverters, racking or structure, transformers, switchgear, panelboards combiner boxes or monitoring equipment suffers a manufacturer's serial defect to the extent more than 5% of the equipment at a singular site is out of service for a period greater than thirty (30) days and requires replacement, provided that Provider used its best efforts to assist the Customer in its attempts to remedy the equipment with respective manufacturer;
- 9.1.3. The manufacturer of the equipment including any modules, inverters, racking or structure, transformers, switchgear, panelboards combiner boxes or monitoring equipment is not able or willing to honor its product warranty to Provider or the warranty has expired and Customer does not remedy by replacement at its own expense, provided that Provider used its best efforts to assist the Customer in its attempts to oblige the manufacturer to comply with its warranty obligations;
- 9.1.4. There is any curtailment, reduction, or adjustment to the System, or failure of the System to perform, whether foreseen or unforeseen, as a result of any legislation, regulation, administrative or executive order, requisition or any other action by any (i) federal, state or local government or agency, (ii) local utility or public utilities commission; or (iii) independent system operator or regional transmission organization;
- 9.1.5. There is an event of Force Majeure; or
- 9.1.6. There is any change in usage of or structures on any of the Sites, or buildings at or near any of the Sites, which causes additional shading, soiling, or otherwise reduced performance of the System.

10. Notification of Changes to Expected Energy.

- 10.1. If either Party determines that any changes to Expected Energy are required based on an event or events described herein, then that Party shall notify the other Party in writing of the basis for its determination and shall provide revised definitions of Expected Energy as set forth in the Attachments to this PeGu Contract. The Parties shall negotiate in good faith whether to revise the Expected Energy and, if mutually agreed to by the Parties, the Parties shall revise this PeGu Contract pursuant to the terms of this PeGu Contract.

11. Additional Provisions.

- 11.1. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below. If notice is

given by personal delivery thereof, it shall be considered delivered on the day of delivery. If notice is given by overnight delivery service shall contain signature confirmation and be effective upon such confirmation which typically is the business day after date deposited, as indicated by the delivery service.

If to District:	If to Provider:
Livermore Valley Joint Unified School District _____ Attention: _____ Copy Attention: _____ Telephone: _____	ENGIE Services U.S. Inc. _____ Attention: _____ Copy Attention: _____ Telephone: _____

11.2. **Disputes.** Disputes between the Parties arising out of this PeGu Contract shall be resolved by the following processes:

- 11.2.1. **Negotiation.** The Parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this PeGu Contract by negotiation.
- 11.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one Party from the other Party of a demand for mediation, the Parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both Parties.
- 11.2.3. **Litigation.** Disputes arising from this PeGu Contract that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project (as defined in the ECM Contract) that is the subject of this PeGu Contract is located.

11.3. **Amendments.** This PeGu Contract may not be amended, supplemented or otherwise modified except by a written instrument specifically referring to this PeGu Contract and signed by both Parties, or as specifically allowed under the terms and conditions outlined in this PeGu Contract

11.4. **Severability.** If any part of this PeGu Contract shall be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the enforceability of any other part hereof.

11.5. **Counterparts.** This PeGu Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

11.6. **Successors and Assigns.** Except as provided herein, no Party may assign this PeGu Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Either Party may assign the PeGu Contract without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this PeGu Contract, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this PeGu Contract upon any person or entity other than the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract for Performance Guarantee and Parameters and Energy Output Data for Sites on the date indicated below.

Dated: _____, 202__

Dated: _____, 202__

Livermore Valley Joint Unified School District

ENGIE Services U.S. Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Attachment A: Avoided Energy Price

	Utility Avoided Cost Rate (\$/kWh)	Avoided Energy Price (Avoided Cost Less Contract Price) (\$/kWh)
1	0.252	0.257
2	0.265	0.270
3	0.278	0.284
4	0.292	0.298
5	0.307	0.313
6	0.322	0.329
7	0.338	0.345
8	0.355	0.362
9	0.373	0.380
10	0.391	0.399
11	0.411	0.419
12	0.431	0.440
13	0.453	0.462
14	0.476	0.486
15	0.499	0.510
16	0.524	0.535
17	0.551	0.562
18	0.578	0.590
19	0.607	0.620
20	0.637	0.651

Attachment B: Expected Energy

Year	East Avenue Middle School	Joe Michell K-8 School	Livermore High School	Total
1	229,719	298,565	300,013	828,297
2	228,570	297,072	298,513	824,156
3	227,428	295,587	297,020	820,035
4	226,290	294,109	295,535	815,935
5	225,159	292,638	294,058	811,855
6	224,033	291,175	292,587	807,796
7	222,913	289,719	291,124	803,757
8	221,798	288,271	289,669	799,738
9	220,689	286,829	288,220	795,739
10	219,586	285,395	286,779	791,760
11	218,488	283,968	285,345	787,802
12	217,396	282,548	283,919	783,863
13	216,309	281,136	282,499	779,943
14	215,227	279,730	281,087	776,044
15	214,151	278,331	279,681	772,163
16	213,080	276,940	278,283	768,303
17	212,015	275,555	276,891	764,461
18	210,955	274,177	275,507	760,639
19	209,900	272,806	274,129	756,836
20	208,850	271,442	272,759	753,051
Total	4,152,838	5,397,429	5,423,606	15,802,171

Attachment C: Typical Estimated Solar Insolation and AC Energy

			East Avenue Middle School	Joe Michell K-8 School	Livermore High School	Total
Month	Daylight hours per Day	Estimate Gh (kWh/ m²)	AC Energy (kWh)	AC Energy (kWh)	AC Energy (kWh)	AC Energy (kWh)
January	9.87	72.3	10,168	11,622	12,808	34,598
February	10.18	86.6	11,679	14,057	14,884	40,620
March	11.74	145	18,249	23,154	23,659	65,062
April	12.5	182.9	21,956	29,193	28,817	79,966
May	13.68	227.4	26,249	36,101	34,895	97,245
June	13.9	244.5	27,407	37,887	36,418	101,712
July	13.94	250.7	28,311	39,025	37,656	104,992
August	13.06	223.5	25,986	35,083	34,362	95,431
September	11.93	176.7	21,418	27,472	27,870	76,760
October	10.81	133.9	17,236	21,032	22,197	60,465
November	10.3	84.3	11,601	13,326	14,607	39,534
December	9.84	66.2	9,459	10,613	11,840	31,912
Total	11.82	1894	229,719	298,565	300,013	828,297

This table is for informational purposes only: this table does not affect the Parties' respective obligations. Daylight Hours refers to the average amount of daylight per day per month.