

**SOLAR POWER PURCHASE AGREEMENT FOR PHOTOVOLTAIC SYSTEMS (this "SPPA")**

(Rev 1/6/2016)

AGREEMENT NUMBER \_\_\_\_\_

REGISTRATION NUMBER \_\_\_\_\_

1. This SPPA is entered into between the HOST and the CONTRACTOR named below:

STATE HOST'S NAME (HOST)

State of California, acting through the Department of [insert name of department]

CONTRACTOR NAME (CONTRACTOR)

2. The term of this SPPA shall commence on the Effective Date and shall continue for a period of twenty (20) years from the Commercial Operation Date of the System unless terminated earlier pursuant to the provisions in this SPPA or the SLA.

3. The maximum amount of this SPPA See Section 2 of SPPA

4. The Parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of this SPPA. Except as specifically provided to the contrary in this SPPA, capitalized terms in this SPPA shall have the meanings ascribed to them in the SLA.

EXHIBIT A – RECITALS

1 page

EXHIBIT B – SPPA TERMS AND CONDITIONS

25 pages

EXHIBIT C – FORMAT FOR CONTRACTOR ELECTRICITY INVOICE

1 page

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

\_\_\_\_\_

DATE SIGNED (Do not type)

\_\_\_\_\_

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

\_\_\_\_\_

**STATE OF CALIFORNIA**

HOST NAME

\_\_\_\_\_

BY (Authorized Signature)

\_\_\_\_\_

DATE SIGNED (Do not type)

\_\_\_\_\_

PRINTED NAME AND TITLE OF PERSON SIGNING

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

☐ Exempt per: AGENCY Authority

## **EXHIBIT A – RECITALS**

This SPPA and all EXHIBITS hereto, which are incorporated into this SPPA by reference and made a part hereof, is dated as of \_\_\_\_\_, 20\_\_ for reference purposes only and is by and between the HOST and the CONTRACTOR, each sometimes referred to herein individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

### **WITNESSETH:**

**WHEREAS**, the State of California (“State”) Legislature allows for State agencies to enter into energy saving contracts that provide for the design, financing, installation and maintenance of alternative energy supply sources for electrical or thermal energy pursuant to Section 388 of the Public Utilities Code;

**WHEREAS**, pursuant to Section 388 of the Public Utilities Code, the Department of General Services (“DGS”) and HOST, together with LICENSEE have on the same date herewith executed a Site License Agreement (“SLA”), Agreement Number \_\_\_\_\_, under which the DGS and HOST have licensed the Licensed Area to LICENSEE;

**WHEREAS**, further to the SLA, CONTRACTOR is a Permittee and permitted non-exclusive and revocable limited access to the Licensed Area for the generation, delivery and/or sale of Electricity to HOST as set forth in this SPPA; and

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

## **EXHIBIT B – SPPA TERMS AND CONDITIONS**

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## 1. DEFINITIONS AND TERM

- 1.1. Definitions.** Except as specifically provided to the contrary in this SPPA, or unless the context clearly requires otherwise, the capitalized terms in this SPPA (including any exhibits, attachments and appendices) shall have the meanings set forth in the SLA.
- 1.2. Term.** The Term of this SPPA shall commence on the Effective Date and shall continue for a period of twenty (20) years from the Commercial Operation Date of the System unless terminated earlier pursuant to the provisions in this SPPA or the SLA. In the event of termination of the SLA, this SPPA shall be deemed to terminate as of the same date.

## 2. SALE OF ELECTRICITY

- 2.1. Purchase/Sale of Electricity.** CONTRACTOR will provide to HOST all Electricity generated and delivered by the System at a price per kilowatt-hour for the term of this SPPA and as otherwise specified in this SPPA. HOST shall be obligated in any Contract Year to purchase up to the Expected Electricity Production ("EEP") for such Contract Year provided that CONTRACTOR delivers such amount of Electricity to the Electrical Interconnection Point in accordance with this SPPA. If CONTRACTOR delivers more than the EEP in any Contract Year, HOST shall not be obligated to purchase any kWh in excess of the EEP unless, in the reasonable judgment of HOST, HOST can use such excess to offset its loads either directly or through net metering and the cost is less than that charged by the Utility.
- 2.2. Electricity Price.** The pricing for Electricity shall be the Fixed Price of \$\_\_\_\_\_ per kWh for the duration of the Contract. CONTRACTOR shall provide to HOST all Electricity produced by the System at the Electrical Interconnection Point at the Fixed Price per kilowatt-hour
- 2.3. Standby and Other Charges.** CONTRACTOR shall be liable for and shall pay all charges imposed on or incurred by HOST including Standby Charges and Departing Load Charges based on the kWh of electrical energy produced by the System. If these charges are present on HOST's utility bill, these charges shall be deducted from the CONTRACTOR invoice for the month following the date such charges become due from HOST.
- 2.4. Environmental Attributes and Renewable Energy Credits.** The Electricity Price includes all Environmental Attributes, including Renewable Energy Credits (RECs), which shall become the property of HOST.
- 2.4.1.** CONTRACTOR will act as the Qualified Reporting Entity and report the generation of the System in the WREGIS and shall provide confirmation of reporting of the RECs to HOST.
- 2.4.2. CONTRACTOR Warranties.** CONTRACTOR and, if applicable, its assigns and successors represent and warrant that throughout the Term of this SPPA any RECs transferred to HOST will conform to the definition and attributes required for compliance with California's renewables portfolio standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Applicable Laws occurs after execution of this SPPA that causes this representation and warranty to be

materially false or misleading, it shall not be an Event of Default if CONTRACTOR has used commercially reasonable efforts to comply with such change in law.

- 2.5. Rebates and Other Incentives.** Any grant, rebate, incentive payment or credit by the Utility paid as a result of the design, construction and operation of the System shall inure to the benefit of CONTRACTOR. HOST will cooperate in good faith as necessary to enable CONTRACTOR to obtain all available incentives and rebates, including assignment to CONTRACTOR of any incentive received by HOST in connection with the System. Nothing in this Section 2.6 is intended to change or modify HOST's rights and interests in all Environmental Attributes other than the RECs as provided in Section 2.4.

### **3. SYSTEM INVOICING AND PAYMENT**

- 3.1. Amounts Due.** The invoiced amount due from HOST to CONTRACTOR for each Billing Cycle for Electricity delivered to the Electrical Interconnection Point shall be:

$A = P \times Q$  where:

A = Amount of payment due to CONTRACTOR for Electricity for the Billing Cycle.

P = Price due per kWh delivered for the Billing Cycle of that Contract Year (see table in Section 2.2).

Q = Quantity of Electricity delivered to the HOST in kWh for the Billing Cycle per the Meter.

- 3.2. Invoicing.** CONTRACTOR shall deliver to HOST an invoice for each Billing Cycle within fifteen (15) Business Days of the close of the Billing Cycle during the Term to the address as set forth in Section 14.3 of this SPPA. Each invoice shall contain all the information as displayed in EXHIBIT C and shall state the charges and the amounts due CONTRACTOR for Electricity delivered to HOST by the System.

In the event that HOST has entered into multiple solar power purchase agreements for multiple Systems (each a "Multiple System", collectively "Multiple Systems") with CONTRACTOR, HOST may elect to have CONTRACTOR consolidate the Multiple Systems invoices into one aggregated invoice with each Multiple System meter detail provided as supporting documentation to the aggregated invoice for each Billing Cycle.

- 3.3. Net Energy Metering.** The Parties acknowledge that the System shall be designed, constructed, and operated to provide net metering capability and all billings under this SPPA shall be in compliance with the Net Energy Metering tariff applicable to Host in existence as of the Effective Date of this SPPA (See CPUC Resolutions, Resolution E-4753 (PG&E), Resolution E-4725 (SCE), as well as SCE Advice Letter 3093-E-A and Advice Letter 3221-E, and PG&E Advice Letter 4617-E). Any benefits received from a Net Energy Metering tariff accrue solely to Host and CONTRACTOR shall assist HOST in tracking the amount and value of banked Electricity under such tariff and shall prepare invoices in accordance with the Net Energy Metering tariff. Payment for Electricity that is generated by the System under a Net Energy Metering tariff and that is exported to the Utility's electrical grid at the Electrical Interconnection Point shall be at the Fixed Price/kWh. In no event shall HOST pay for electricity that is not delivered to HOST

as measured by the Meter at the Electrical Interconnection Point, nor shall HOST purchase in any Contract Year an amount of Electricity from CONTRACTOR in excess of the EEP for such year except to the extent that HOST can reasonably determine that they can obtain the benefit of any excess purchases under the Net Energy Metering tariff.

- 3.4. Sales of Excess Electricity.** If Applicable Laws allow CONTRACTOR or HOST to sell Electricity produced in excess of HOST on-site usage during defined periods, HOST shall have the right to determine, in its sole reasonable judgment, whether or not to sell such excess Electricity. If HOST decides to sell such excess, CONTRACTOR shall cooperate with HOST in effecting such sales provided that such assistance does not materially increase CONTRACTOR's operating or administrative costs. If HOST decides to sell such excess, the Parties agree to allocate the proceeds from such sales in accordance with this section. To the extent that excess kWhs are produced then HOST shall be entitled to 100% of the revenues or credits from such sales.
- 3.5. Invoice Remittance.** HOST shall pay invoices to CONTRACTOR by check, wire transfer or electronic funds transfer, in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.
- 3.6. Invoice Disputes.** In the event HOST disputes all or any part of any invoice submitted by CONTRACTOR under this SPPA, HOST shall nevertheless pay the undisputed portion of the invoice, in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927, and shall notify CONTRACTOR in writing within fifteen (15) calendar days from the date of receipt of any disputed invoice or adjusted invoice. The Parties shall work in good faith to resolve the dispute amicably and promptly. If upon determination of the correct billing amount, it is determined that HOST has underpaid CONTRACTOR, HOST shall promptly pay the amount due to CONTRACTOR. If upon determination of the correct billing amount it is determined that HOST has overpaid, CONTRACTOR shall promptly credit to HOST the amount of overpayment. Notwithstanding the above paragraph, the Parties shall have the rights set forth in Section 16.17.3 of the SLA to examine the records of the other Party to the extent necessary to verify the accuracy of all or any part of any invoice.
- 3.7. Annual Reporting.** Within sixty (60) calendar days after the end of each Contract Year CONTRACTOR shall submit to HOST, in a format reasonably acceptable to HOST, unaudited financial statements for the year related to CONTRACTOR's performance under this SPPA, including a summary of the System's technical performance for that Contract Year, and cumulatively from the COD; and an annual report summarizing the System's operating performance for the preceding year.

#### **4. FUNDING AVAILABILITY**

- 4.1. General Funding Requirement.** All payment obligations of HOST under this SPPA or any related agreement are subject to appropriation by the State Legislature.

- 4.2. Funding Requirement for Electricity.** It is mutually agreed that if the State Legislature does not appropriate sufficient funds for HOST to purchase Electricity under this SPPA, the obligations of HOST under this SPPA shall be suspended during the continuation of such non-appropriation event or amended to reflect any reduction of appropriated funds. HOST will take such action as may be necessary to include, or cause to be included, in its annual operating budget funds sufficient to purchase the estimated cost of Electricity hereunder. HOST will promptly notify Contractor if it appears likely that a non-appropriation event will occur. HOST shall allocate any lawfully available funds for the purchase of Electricity hereunder.

## **5. METERING**

- 5.1. Interval Data Recording Meter.** CONTRACTOR shall measure the actual amount of Electricity delivered to HOST and/or exported electricity in parallel to the utility grid through the NEM interconnection by the System at the Electrical Interconnection Point utilizing a commercially available revenue grade Meter that shall comply with the ANSI code for electricity meters C12.1-2008 or its successor. The Meter shall be installed and maintained at CONTRACTOR's expense. The Meter provided and installed by the CONTRACTOR shall have standard industry telemetry capabilities for communication with Ethernet, cellular and other common output capabilities including, but not limited to, kyz output connection (also known as a "pulse" connection) that will provide HOST with the ability to connect the Meter to HOST's Energy Management System for the purpose of incorporating System electrical output data into HOST's energy usage database (or comma separated value data file). CONTRACTOR understands that this is a necessary capability in the event that HOST requires real time monitoring of HOST's total energy demand and usage for the purpose of complying with, for example, the requirements of a Utility administered Demand Response program in which HOST is a participant. Actual physical connection to the Meter by HOST for the stated purpose shall be at HOST expense, with review and approval by CONTRACTOR.
- 5.2. Website.** CONTRACTOR shall post meter readings and 15-minute, real time, interval data to a password protected website and make this website available to HOST.
- 5.3. Meter Calibration.** CONTRACTOR shall have the Meter tested every two years at CONTRACTOR's expense by a certified independent third party approved by HOST. HOST shall be allowed to observe the Meter test, and CONTRACTOR shall provide notice of the testing to HOST at least ten (10) Business Days prior to the test date. CONTRACTOR shall provide signed copies of the results of the Meter test to HOST. In addition to the bi-annual test, CONTRACTOR shall test the Meter at any reasonable time upon the request of HOST. HOST shall reimburse CONTRACTOR for the cost of any test requested by HOST, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or as defined by the CPUC for Meter calibration and operation.



- 5.4. Meter Inaccuracy.** If a Meter is determined to be inaccurate and such inaccuracy exceeds industry standard tolerance allowances or as defined by the CPUC for electric Meters and if the date that such inaccuracy commenced is known, then all invoices since the date on which such inaccuracies began shall be corrected. If it is unknown when the Meter inaccuracy commenced then the invoices covering the period of time since the last Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one half of such period. Adjustments which benefit HOST shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments which benefit CONTRACTOR shall be included on CONTRACTOR's next invoice to HOST.

## **6. CONTRACTOR'S OUTPUT GUARANTEE**

- 6.1. Guaranteed Electricity Production.** CONTRACTOR represents that it anticipates that the System will deliver to HOST at the Electrical Interconnection Point no less than the amount of Electricity in kWh AC defined as the Expected Electricity Production (EEP), for each Contract Year, as set forth in the table below. CONTRACTOR warrants and guarantees that it shall deliver to HOST at the Electrical Interconnection Point an amount of Electricity in kWh AC for each Contract Year that equals or exceeds the Guaranteed Electricity Production (GEP) which is eighty (80) percent, as set forth in the table below. The Parties confirm that the EEP and GEP set forth below are the quantities as proposed by CONTRACTOR in Bid Proposal Attachment 8 – Proposal Form 2 – Price Bid Form - Exhibit 8-2 – Annual Site Output and Pricing Profile. In the event that the System capacity is changed by mutual agreement during the design and/or CEQA process, the EEP and GEP shall be adjusted in proportion to the difference between the proposed System capacity and the revised installed System capacity.

Electricity Production in kWh AC					
Contract Year	Expected Electricity Production	Guaranteed Electricity Production	Contract Year	Expected Electricity Production	Guaranteed Electricity Production
1			11		
2			12		
3			13		
4			14		
5			15		
6			16		
7			17		
8			18		
9			19		
10			20		

- 6.2. Guaranteed Electricity Production Failure.** Beginning with the second Contract Year, if CONTRACTOR fails to meet the GEP for any Contract Year, CONTRACTOR agrees to credit HOST an amount equal to the cost savings HOST did not receive by reason of the failure of CONTRACTOR to meet the GEP for that Contract Year. CONTRACTOR shall report to HOST within sixty (60) calendar days after the end of each Contract Year, the total Electricity produced by the System during the prior Contract Year and the amount, if any, of any production shortfall below the GEP. CONTRACTOR shall calculate and report the amount of

cost savings that such amount of shortfall of production would have produced, based on the Contract Rate compared to the Utility Rate (as defined below) for the year, and shall credit that amount to HOST beginning with the fourth (4<sup>th</sup>) calendar month of the then current Contract Year, and continuing each month thereafter, until the total amount is fully credited to Host. (For the purposes of this subsection, the "Utility Rate" for any period shall be the aggregate amount of electricity (kWh) sold by the local utility to HOST during such period for use at the Facility, divided by the aggregate amount HOST is required to pay the local utility with respect to such period.) In the event the amount of the credit due HOST exceeds the amount due from HOST for Electricity supplied to HOST and the credit is not exhausted within four Billing Cycles, CONTRACTOR agrees to remit the un-exhausted credit to HOST, upon its request.

## **7. OPERATIONS AND MAINTENANCE**

- 7.1. General.** CONTRACTOR shall cause the System to be operated and maintained in good repair and operation at CONTRACTOR's sole expense, including the cost of capital repairs and replacements, in a commercially reasonable manner throughout the Term. CONTRACTOR warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the Term. CONTRACTOR shall also be responsible for any maintenance and repairs to the Licensed Area if such maintenance and repairs are necessary as a result of CONTRACTOR's use.
- 7.2. Licensed Area.** CONTRACTOR acknowledges its use of the Licensed Area is as a Permittee under the SLA. CONTRACTOR further acknowledges it shall use the Licensed Area only for the Permitted Use. CONTRACTOR shall maintain the Licensed Area in a commercially reasonable manner at CONTRACTOR's sole expense. CONTRACTOR shall have no expectation of HOST's obligation to maintain the Licensed Area for purposes such as vegetation management.
- 7.3. System Maintenance.** CONTRACTOR shall notify HOST twenty-four (24) hours prior to accessing the Licensed Area to perform System maintenance. CONTRACTOR shall be subject to access procedures reasonably adopted from time to time by HOST including, but not limited to, the procedures set forth in Exhibit E of the SLA (Access Procedures for Site and Licensed Area). Only CONTRACTOR and Permittees shall be permitted access to the Licensed Area.

**7.4. CONTRACTOR's Failure to Maintain.** If CONTRACTOR fails to maintain the System in good repair and operation, HOST shall give CONTRACTOR written notice to perform such maintenance and repair activities as are reasonably required under this SPPA. If within ten (10) Business Days thereafter, CONTRACTOR fails to commence and diligently complete the requested maintenance or repairs, then, in addition to its other remedies under the SPPA, HOST shall have the right to have such work performed and expend such funds at the expense of CONTRACTOR as are reasonably required to perform such work. Any amount so expended by HOST shall be paid promptly by CONTRACTOR upon HOST's submittal of the work invoices to CONTRACTOR, or HOST may deduct the amount expended from invoices submitted to HOST by CONTRACTOR for all amounts due CONTRACTOR for Electricity delivered to HOST.

**7.5. Electric Power Requirements.** Electricity from the System must be provided at 60 Hertz and at the appropriate voltage for electrical interconnection to HOST voltage service level, which will be established by HOST.

The System components must comply with all standards relevant to the operation and installation of solar photovoltaic equipment by UL or another nationally recognized testing facility. Modules, inverters and components must be certified to UL 1703 and as required by the CSI incentive program and/or the CEC. Inverters must comply with the following requirements:

- IEEE 929-2000, "Recommended Practice for Utility Interface of Photovoltaic Systems";
- UL Subject 1741, "Standard for Static Inverters and Charge Controllers for use in Photovoltaic Power Systems"; and
- Any and all requirements as listed by the CSI incentive program and/or the CEC for the installation of Systems.
- The system must include all required hardware needed for the installation, NEM interconnection, and operation of the System. The System includes all of the equipment necessary to interconnect and operate in parallel to the utility grid, including metering and the required NEM interconnection protective relays and event recording devices in accordance with the applicable Utilities NEM Interconnection Guidelines. Please refer to CPUC PG&E Resolution E-4753 and SCE Resolution E-4725.

Other codes that will apply include, but are not limited to:

- ANSI C12.1-2008; (electricity metering)
- ASME PTC 50 (solar PV performance)
- ANSI Z21.83 (solar PV performance and safety)
- NFPA 70 (including NFPA 70E Arc flash,)
- IEEE 1547 (interconnections)

**7.6. Outage Reporting.** Within thirty (30) calendar days of any outage of 15% or more of the System capacity lasting more than twenty-four hours, CONTRACTOR shall

provide to HOST a report indicating the nature and cause of the outage and the steps taken by CONTRACTOR to correct the problem.

- 7.7. Permits.** CONTRACTOR is responsible at its sole cost to obtain all permits necessary for the maintenance and operation of the System. CONTRACTOR shall provide HOST with electronic copies of all permits, approvals and conditions issued by applicable federal, state and local governmental entities, including the Utility.
- 7.8. Security.** At all times during the construction and operation of the System on the Licensed Area, CONTRACTOR shall keep the area adequately secured for safety and security purposes. CONTRACTOR shall coordinate with the Site manager and comply with all Site security requirements when accessing the Licensed Area, including, but not limited to those in Exhibit E to the SLA. CONTRACTOR hereby acknowledges that HOST shall have no obligation whatsoever to provide guard services or other security measures for the benefit of CONTRACTOR *[user note: add the following if CDCR is HOST: other than during System construction at CDCR facilities as provided for by the payment of the Transaction Fees per the Tables in Exhibit N of the SLA]*. CONTRACTOR assumes all responsibility for the protection of CONTRACTOR and Permittees and the property of CONTRACTOR and Permittees from acts of third parties.
- 7.9. Insurance.** CONTRACTOR shall throughout the Term of this SPPA maintain separately or jointly with LICENSEE the insurance coverages required in Section 9 of the SLA and shall otherwise comply with the insurance provisions in Section 9 of the SLA. This provision is not intended to cause duplicate coverage if CONTRACTOR is also LICENSEE under the SLA or to the extent that CONTRACTOR is a named insured on LICENSEE's policies under the SLA.
- 7.10. HOST Training.** Within thirty (30) days of acceptance of the COD, and from time to time thereafter, but not less than once each Contract Year, CONTRACTOR shall instruct and train HOST designated personnel on how to shut down the System in the event of an emergency. CONTRACTOR shall also maintain current emergency procedures as part of the Project Manual and shall update the Project Manual and provide written notice to HOST promptly for any changes in those procedures.
- 7.11. Lien /Removal of Liens.** During the Term, CONTRACTOR shall comply with the provisions in Section 4 of the SLA concerning the senior priority of the Senior Security Documents. CONTRACTOR shall not cause or permit any liens to attach or to be placed upon or encumber the Facility, the Site or the Licensed Area arising out of or resulting from this SPPA or any work performed by CONTRACTOR. If any such lien attaches, CONTRACTOR agrees to cause the lien to be promptly removed by the posting of a bond, payment of the lien, or otherwise, without cost to HOST. If CONTRACTOR fails to promptly remove the lien, in addition to its other remedies under this SPPA, HOST may undertake to cause such lien to be removed and charge to CONTRACTOR any costs and expenses incurred in connection with the removal of said lien. CONTRACTOR agrees to hold harmless, defend and indemnify HOST against all costs and expenses including reasonable attorneys' fees and court costs incurred in discharging and releasing any such lien.
- 7.12. Protection of Property.** CONTRACTOR shall not do or permit to be done anything which will invalidate any fire, extended coverage or other insurance policy

covering the Site or Licensed Area, HOST's interest in the property located thereon and therein, or that will violate any warranty for the Site or Licensed Area. CONTRACTOR shall comply with all Applicable Laws.

- 7.13. Health and Safety.** CONTRACTOR shall take all necessary and reasonable safety precautions and shall comply with all Applicable Laws pertaining to the safety of persons and real and personal property. CONTRACTOR shall immediately report to HOST any death, lost time injury, or property damage to HOST property that occurs within the Licensed Area or the Site or as part of CONTRACTOR's operation of the System on the Licensed Area.
- 7.14. Notice of Damage.** CONTRACTOR shall promptly notify HOST of any matter of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to affect the System or HOST's operations.
- 7.15. Applicable Laws.** All activities conducted by CONTRACTOR pursuant to this SPPA shall be in compliance with all Applicable Laws, and shall be conducted at CONTRACTOR's own cost and expense.
- 7.16. Hazardous Material.** CONTRACTOR agrees to comply with all applicable environmental laws pertaining to the use, storage and disposal of Hazardous Material at the Licensed Area. CONTRACTOR shall indemnify, defend and hold harmless HOST, its officers, agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of environmental laws caused by CONTRACTOR or CONTRACTOR's Permittees at or on the Licensed Area. In addition, CONTRACTOR shall reimburse HOST for any and all costs related to investigation, clean up and/or fines incurred by HOST for non-compliance with environmental laws that are caused by CONTRACTOR or CONTRACTOR's Permittees at or on the Licensed Area. HOST reserves the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials and environmental laws.
- 7.17. Violation of Law.** CONTRACTOR shall immediately suspend any use of the System upon notice by the CPUC, CEC or any governmental authority having jurisdiction over any of CONTRACTOR's activities under this SPPA which constitutes notice of an alleged violation of any Applicable Law until the violation, if any, is corrected and the applicable governmental authority concurs that the violation is corrected. CONTRACTOR shall immediately notify HOST regarding any alleged violation.
- 7.18. No Infringement.** CONTRACTOR represents and warrants that CONTRACTOR's installation and operation of the System at the Licensed Area shall not infringe upon any third party's patent, copyright, trade secret or intellectual property or other proprietary rights. In addition, CONTRACTOR shall pay all royalties and license fees which may be required for the methodology, techniques, and for other intellectual property, in connection with the System. CONTRACTOR shall indemnify HOST against and defend all suits or claims for infringement of any patent, copyright, trade secret, trade name, trademark or any other proprietary or contractual rights and shall hold HOST harmless from loss, expense, claim or cost on account thereof.

- 7.19. Customer Service Support.** CONTRACTOR will provide customer service support accessible to HOST twenty-four (24) hours per day, seven (7) days per week. For purposes of this provision, “accessible” means that CONTRACTOR will provide a designated customer service telephone number with a voice mail system which records the time and date of the call. CONTRACTOR agrees that it will respond to HOST messages on this designated customer service voice mail system within twenty-four (24) hours of HOST call.

## **8. HOST OBLIGATIONS**

- 8.1. General.** Subject to any specific limitations in this SPPA, HOST shall at all times during the Term use commercially reasonable efforts to maintain the Site, other than the System, in good condition and repair so as to be able to receive and utilize the Electricity delivered from the System. HOST shall at all times maintain the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property. HOST will maintain in good working order and available at all times, its connection and service contract(s) with the Utility so that HOST can, upon any suspension or interruption of Electricity from the System, obtain electricity from a Utility. All obligations of HOST under this SPPA regarding maintenance shall be subject to the right of HOST during periods of renovation, or maintenance and repairs to any part of the Licensed Area or Site to issue a shutdown order to the System, consistent with Section 9.
- 8.2. Restrictions on Shading.** Parties agree that HOST shall make good faith efforts to avoid activities which result in overshadowing or shading of the System in a manner that would prevent CONTRACTOR from meeting its obligations under this SPPA. In the event that HOST activities result in the System being overshadowed in a manner which prevents CONTRACTOR from meeting its EEP on an annualized basis, HOST agrees to resolve the shortage as described in Section 9.5. CONTRACTOR shall provide and justify data verifying the actual loss of generation that occurred due to shading. At HOST’s request, Parties may agree to make reasonable efforts to relocate the System at HOST’s cost to a mutually agreeable location. If the Parties cannot agree on an alternative location for the System, then the Parties agree that at HOST’s option, HOST may terminate this SPPA, in which case CONTRACTOR shall remove the System pursuant to Section 11.1 of the SLA, and subsequent to such removal and restoration of the Licensed Area HOST shall pay any actual damages that may be due in accordance with Section 14.1.2 of the SLA.
- 8.3. No Control over Shading.** Parties agree that in the event of shading which results from actions outside of the control of HOST or CONTRACTOR or from Force Majeure, the in-lieu of Electricity payment remedy shall not apply, and neither Party shall be in default. Should any overshadowing or shading occur as a result of actions outside the control of HOST or CONTRACTOR, the following provisions shall apply:
- 8.3.1. Relocation.** CONTRACTOR and HOST shall attempt in good faith to find another location where CONTRACTOR could move the System and satisfy its obligations for the remainder of the Term. If such location can be found to the reasonable acceptance of both Parties, then the Parties shall work with due diligence to accommodate the relocation of the System by the CONTRACTOR and at CONTRACTOR’s sole cost. The Term of this SPPA shall be extended on a day-for-day basis equal to the days that are required for CONTRACTOR to complete

the relocation; provided further that the Price for Contract Year 20 shall continue in effect throughout the duration of such extension.

**8.3.2. No Adequate Alternative Site.** If the Parties cannot, within six months of the commencement of shading on the System, agree on a substitute location for relocation, then the Parties shall work in good faith to amend this SPPA to adjust the EEP and the GEP of the System. If the Parties cannot agree on such amendment, this SPPA shall terminate with no actual damages due and CONTRACTOR shall fulfill its obligations for System removal pursuant to Section 11.1 of the SLA and neither Party shall have any further obligation to the other.

**8.4. Liens.** Subject to the senior priority of the Senior Security Documents as set forth in Section 4 of the SLA, HOST shall not create or grant any personal property liens against, on or with respect to the System or any interest therein. If HOST breaches their obligations under this section, HOST shall immediately notify CONTRACTOR in writing, shall promptly cause such lien to be discharged and released of record without cost to CONTRACTOR.

**8.5. HOST System Repair Costs.** If HOST damages the System as a result of HOST operations, maintenance, repairs or renovations, and for reasons other than an event that constitutes a Force Majeure, HOST shall reimburse CONTRACTOR reasonable costs to repair the damage to the System. If, in its sole opinion, HOST deems the costs to repair the System are unreasonable, then HOST may elect to terminate this SPPA and CONTRACTOR shall remove the System in accordance with Section 11.1 of the SLA and HOST shall pay CONTRACTOR actual damages established according to proof that may be due in accordance with Section 14.1.2 of the SLA.

**8.6. Notice for Inspections.** HOST shall be permitted access to inspect the System upon twenty four (24) hours prior written notice to CONTRACTOR. HOST personnel must be accompanied by personnel of CONTRACTOR during any non-emergency inspection of the System, unless CONTRACTOR agrees in writing to waive its right to accompany HOST personnel on all non-emergency inspections. This requirement in no way prohibits HOST from inspecting any and all portions of the Site and Licensed Area at any time.

## **9. SYSTEM MALFUNCTIONS, SHUTDOWNS AND EMERGENCIES**

**9.1. System Malfunctions.** HOST and CONTRACTOR each shall notify the other Party as soon as possible but not more than twenty four (24) hours following such Party's discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Electricity from the System by providing notice in accordance with Section 14.3.

**9.2. System Malfunction Repairs.** CONTRACTOR shall commence repairs to the malfunctioning System and restore the supply of Electricity, as soon as reasonably possible after receipt of HOST notice or upon CONTRACTOR's discovery of any of the conditions causing a malfunction in the operation of the System, subject to the Access Procedures for the Site and Licensed Area defined in Exhibit E of the SLA. In the event CONTRACTOR must repair the System and requires HOST personnel to be present after normal business hours, CONTRACTOR shall reimburse HOST for all costs for after-hours access to the Site and Licensed Area and shall bear all costs to repair the System.

### **9.3. System Emergencies**

- 9.3.1. Notification.** CONTRACTOR and HOST each shall notify the other Party as soon as possible upon the discovery of an emergency condition in the System. For emergency repairs, the Parties shall contact the persons identified in Section 14.3.
- 9.3.2. Immediate Dispatch.** If an emergency condition exists, CONTRACTOR shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner, subject to HOST access procedures in Exhibit E of the SLA.
- 9.3.3. Disconnection of System by HOST.** In case of emergency in which HOST determines that the continued operation of the System presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, the Parties agree that HOST may disconnect the System from the Licensed Area prior to notification of CONTRACTOR. HOST will notify CONTRACTOR if HOST disconnects the System pursuant to this provision no later than eight (8) hours after the System is disconnected. Parties agree that only CONTRACTOR or an agent designated by CONTRACTOR will be authorized to reconnect the System after the System is disconnected by HOST pursuant to this section. In no event shall HOST be liable for any damage for actions taken by HOST in the event of an emergency.

### **9.4. System Shutdowns**

- 9.4.1. Scheduled Shutdown.** If CONTRACTOR schedules a shutdown of the System, CONTRACTOR shall notify HOST in writing as soon as practical after CONTRACTOR schedules such shutdown but in no event less than fifteen (15) calendar days prior to the start of such shutdown. Such notice shall include the reasons and expected duration of such shutdown.
- 9.4.2. Unscheduled Shutdown.** If a shutdown of the System occurs that is not scheduled, CONTRACTOR shall provide notice to HOST as soon as possible. For any shutdown which duration exceeds twenty four (24) hours, CONTRACTOR shall be required to notify HOST of the cause and time of expected resumption of operation of the System.
- 9.5. HOST Temporary Shutdown.** During the Term, HOST shall be entitled to shut down the System on a Temporary basis in order to perform maintenance, repairs and renovations to the Facility. HOST will work in good faith with CONTRACTOR to minimize the impact of such shutdowns on CONTRACTOR's operations to the extent practical in HOST's sole reasonable judgment. The Parties agree there shall be no impact on CONTRACTOR'S operations if any such shutdowns occur during the off-peak hours on any day. All such shutdowns occurring during peak hours shall be tracked and reported in the annual report to HOST in accordance with Section 3.7.

In the event of any such Temporary shutdown, at the time of the annual System performance evaluation pursuant to Sections 3.7 and 6.2 of this SPPA, the GEP shall be adjusted for the time period the System was shut down and no monetary consideration or payments shall be due from HOST for the time period in which the system was shut down for maintenance, repair and renovations to the Facility. HOST will either extend the term of this SPPA and the SLA for a period equivalent



to the time necessary for CONTRACTOR to generate and deliver the amount of actual electricity production (in kWh) that was foregone by HOST during the shutdown period, or consider such other mechanism negotiated by the Parties.

## **10. ASSIGNMENT**

**10.1. Assignment.** Except as otherwise provided in this Section 10 and as provided in the SLA, the rights, duties and obligations of CONTRACTOR under this SPPA shall not be assignable by CONTRACTOR in whole or in part without the written consent of HOST and upon such reasonable terms and conditions that HOST may require. HOST's consent to one assignment shall not be deemed consent to any subsequent assignment. Upon a second request for assignment of CONTRACTOR's interest, and with each subsequent request for assignment, CONTRACTOR shall submit a payment of ten thousand dollars (\$10,000) to HOST to offset administrative costs. Any assignments done under Sections 10.1.1 through 10.1.2 below shall be exempt for the purpose of determining whether a payment is due to HOST. No such assignment shall relieve CONTRACTOR of its obligations under this SPPA unless HOST has agreed otherwise in writing. For purposes of this Section 10, the sale, assignment, transfer or disposition, directly or indirectly, of any type which results in a change of control of CONTRACTOR shall be deemed an assignment of this SPPA. Change of control shall be as defined in common law, and may be the result of a single or multiple related transactions which result in the cumulative transfer in a twelve (12) month period of more than fifty percent (50%) of the voting stock or equity interests of CONTRACTOR. The following transactions or events shall not constitute an assignment that is subject to HOST prior written approval:

**10.1.1.** The assignment to any other entity directly or indirectly controlling, controlled by or under common control with of CONTRACTOR provided that the proposed Assignee shall submit a valid Certificate of Status from the California Secretary of State and provided that CONTRACTOR submits documentation to demonstrate to HOST, in its reasonable judgment, that CONTRACTOR for the full Term of the SLA and this SPPA and shall retain all obligations and responsibilities under those Agreements.

**10.1.2.** The sale of shares of a publicly traded company in an open market transaction.

**10.2. HOST Approval.** CONTRACTOR acknowledges that the DGS and HOST are relying upon the unique expertise and capability of CONTRACTOR. Any assignment of this SPPA shall be subject to the written approval of HOST and the DGS, which approval shall not be unreasonably withheld. CONTRACTOR shall provide HOST and the DGS with thirty (30) calendar days' written notice of any proposed assignment that requires their approval. CONTRACTOR must include in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of HOST that such proposed assignee has both the financial capacity and the technical and managerial ability to perform the duties and obligations required under this SPPA at a level equal to or exceeding CONTRACTOR's abilities. If HOST and the DGS determine in their sole reasonable judgment that those standards are satisfied, they shall approve such proposed assignment. In the event HOST and the DGS determine in their sole reasonable judgment that the assignee fails to meet the financial capacity and the technical ability to perform the duties and obligations required under this SPPA, HOST shall promptly give CONTRACTOR written notice of such determination and CONTRACTOR shall be prohibited from making such assignment. HOST shall notify CONTRACTOR within thirty (30) calendar days after HOST's receipt of CONTRACTOR's notice of a proposed assignment and supporting documentation as to whether or not HOST and the DGS approve the proposed assignment. In the event that HOST and the DGS do not approve a requested assignment no funds submitted with that request as may have been required under Section 10.1 shall be refunded to CONTRACTOR.

**10.3. Collateral Assignment.** The DGS, HOST and the SPWB acknowledge that CONTRACTOR may be financing the acquisition and installation of the System with financing accommodations from one or more Lenders and that CONTRACTOR's obligations under the financing documents may be secured by, among other collateral, a pledge or collateral assignment of CONTRACTOR's rights under this SPPA and a personal property security interest in the System subject to the senior priority of the Senior Security Documents as set forth in Section 4 of the SLA. CONTRACTOR may assign its personal property interest in the System, including CONTRACTOR's rights under this SPPA, as security for loans or financing of the System including a System Lease with a System Lessor, subject to the requirements of Section 4.1 of the SLA. The DGS, HOST or the SPWB, as applicable, will work in good faith with CONTRACTOR and Lender to agree upon the documentation that may be required in connection with the financing. If a Lender requests additional or different terms and conditions, the DGS, HOST and the SPWB, agree to consider such requests in good faith, but the DGS, HOST or the SPWB is not obligated to agree to any newly proposed terms and conditions contrary to the provisions in Section 4 of the SLA if the DGS, HOST or the SPWB, each in its sole judgment, determines that such changes are detrimental to the DGS, HOST or the SPWB.

**10.4. CONTRACTOR's Default Under Financing Agreements.** CONTRACTOR agrees to request that any Lender notify HOST and the DGS in writing of any default of CONTRACTOR under any agreement with Lender regarding the System. If the Lender notifies HOST and the DGS that an event of default under the System Lease or other financing agreement has occurred and that the Lender has elected to exercise its rights and remedies there under or under any of the related security documents, then, upon the exercise of such rights and remedies, the Lender or any other qualified purchaser of, or successor to, the interests in a judicial or non-judicial foreclosure sale shall be substituted for CONTRACTOR under this SPPA,

provided that the conditions in this section are satisfied. In that event, HOST will continue to perform their obligations under this SPPA in favor of the Substitute CONTRACTOR provided that such Substitute CONTRACTOR expressly acknowledges in writing that (i) it is assuming all rights, duties, and obligations of CONTRACTOR under this SPPA and (ii) it agrees to cure all of CONTRACTOR's defaults under this SPPA existing at the time such Substitute CONTRACTOR assumes the rights, duties and obligations of CONTRACTOR; and provided further that the Lender has included in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of HOST that such proposed Substitute CONTRACTOR or designee has both the financial capacity and the technical ability to perform the duties and obligations required under this SPPA at a level equal to or exceeding CONTRACTOR's ability. If HOST determines in their sole reasonable judgment that those standards are satisfied, HOST shall approve such proposed Substitute CONTRACTOR or designee for the remaining Term and on the same terms and conditions contained in this SPPA.

In the event HOST determines in their sole reasonable judgment that the proposed Substitute CONTRACTOR or designee fails to meet the financial capacity and the technical ability to perform the duties and obligations required under this SPPA or if the proposed Substitute CONTRACTOR has failed to satisfy the requirements of (i) and (ii) in the preceding paragraph, HOST shall promptly give the Lender written notice of HOST' determination and Lender and CONTRACTOR shall be prohibited from making such assignment.

## **11. DEFAULT**

### **11.1. Events of Default.** A default includes any of the following:

**11.1.1.** Failure of HOST to pay the undisputed monthly charges of CONTRACTOR under the following circumstances, (i) if HOST fails to pay the undisputed monthly charges of CONTRACTOR for a period of one hundred and eighty (180) calendar days or more, CONTRACTOR shall provide HOST with a sixty (60) day notice to cure, (ii) HOST may extend such cure period by thirty (30) calendar day increments by making one or more payments ("Cure Extension Payment") to CONTRACTOR in the amount equal to the monthly payment that would have been due for such period had HOST not been in breach, (iii) all Cure Extension Payments shall be credited against amounts otherwise due from HOST, (iv) if the breach is not cured by HOST during the cure period, as may be extended by HOST, CONTRACTOR may terminate this SPPA and the SLA upon expiration of such cure period, and (v) HOST's failure to pay as a result of the State Legislature not appropriating funding shall not be considered an event of default and shall not trigger the payment of damages of any kind;

**11.1.2.** Any representation or warranty made by a Party to this SPPA proves to have been false or misleading in any material respect when made or if such representation or warranty is required to remain true in all material respects during the Term of this SPPA, if the accuracy of the Representation or warranty is not cured within fifteen (15) Business Days after written notice from the other Party;

**11.1.3.** Failure by a Party to perform any obligation set forth in this SPPA (other than the events that are otherwise specifically covered as a separate event of default), and such failure is not cured within thirty (30) calendar days or other such period as

specified in this SPPA after receipt of written notice of default from the non-defaulting Party; or in the event of a default which cannot be cured within such thirty (30) calendar day period, if the defaulting Party has not commenced and diligently prosecuted such cure within thirty (30) calendar days of written notice and thereafter and diligently prosecuted to cure such default within sixty (60) calendar days after receipt of written notice of default from the non-defaulting Party;

**11.1.4.** A default by the DGS, HOST or LICENSEE under the SLA;

**11.1.5.** A Party makes an assignment or any general arrangement for the benefit of creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed within twenty (20) Business Days after such filing; otherwise becomes bankrupt or insolvent, however evidenced; or is unable to pay its debts as they fall due;

**11.1.6.** CONTRACTOR's failure to operate the System for a continuous period of sixty (60) calendar days or for a total of ninety (90) calendar days in any six month period which failure is not caused by HOST or attributable to Force Majeure. HOST shall have the right to demand an explanation of any continuous periods of non-operation in excess of fifteen (15) calendar days in order to assess the nature and cause of the failure to operate; or

**11.1.7.** Unreasonable interference by CONTRACTOR with the operations of HOST at the Facility, if the interference is curable by suspension of operation of the System and CONTRACTOR fails to suspend operation of the System within forty eight (48) hours of HOST's notice to CONTRACTOR regarding the interference without good cause, as determined by HOST.

**11.2. Notice of Default.** The non-defaulting Party shall provide the defaulting Party written notice of any alleged default hereunder, and such notice shall describe the alleged default. Provided that CONTRACTOR has notified HOST in writing of any Lender and such Lender's name and address, a notice of default shall only be effective if and when the non-defaulting Party also gives such Lender a copy of such notice.

**11.3. Remedies for Default.** A Party may terminate this SPPA if the other Party is in default of this SPPA and such default is not cured within the periods specified in Section 11.1.3. Except as expressly stated otherwise in this SPPA, the rights and remedies granted to the Parties pursuant to this SPPA shall be the sole and exclusive remedies for a failure of a Party to perform its obligations hereunder.

**11.4. HOST Remedies on CONTRACTOR Default.** If CONTRACTOR fails or refuses to perform its obligations under this SPPA and default continues uncured following notice to cure such default as required by this SPPA, along with all other rights and remedies they may have, HOST shall have the following specific remedies:

**11.4.1. HOST Termination of SPPA.** HOST shall have the right to terminate this SPPA if CONTRACTOR ceases producing Electricity for sale to HOST, or abandons the System, or fails to cure any material default within one hundred and eighty (180) calendar days after HOST gives notice to cure. Upon HOST's written notice of

termination, all of CONTRACTOR's rights in the Licensed Area shall terminate. Termination shall not relieve CONTRACTOR from the obligation to pay any sum then due to HOST or from any claim for damages previously accrued or then accruing against CONTRACTOR, including the costs to promptly remove the System and restore the Licensed Area as provided in Section 11.1 of the SLA. Upon any termination of this SPPA under this subsection, CONTRACTOR shall execute such documents as HOST may request to (i) memorialize the termination of this SPPA, (ii) release of HOST from all further obligations under this SPPA, and (iii) extinguish CONTRACTOR rights and interests in the Licensed Area.

**11.4.2. Recovery of Damages.** HOST shall be entitled to damages equal to the amount necessary to compensate HOST for all the detriment proximately caused by CONTRACTOR's failure to perform CONTRACTOR's obligations under this SPPA including any detriment which in the ordinary course of events would be likely to result from CONTRACTOR's failure.

**11.4.3. System Removal.** Promptly after notice of termination, CONTRACTOR shall fulfill its obligations in accordance with Section 11.1 of the SLA.

**11.4.4. No Obligation to pay Actual Damages.** HOST shall have no obligation to pay CONTRACTOR actual damages.

**11.4.5. HOST Self Help.** In the event of default by CONTRACTOR, HOST may offset payments due to CONTRACTOR for Electricity for the purpose of recovering costs or fees for CONTRACTOR's performance obligations, or that would otherwise be due to HOST under the terms of this SPPA.

**11.4.6. Actions Regarding CONTRACTOR.** In the event of default by assignee of CONTRACTOR or any successor to CONTRACTOR in the performance of the terms hereof, the DGS or HOST may proceed directly against CONTRACTOR without necessity of exhausting remedies against such assignee.

**11.4.7. HOST Option to Retain System on CONTRACTOR Default.** In the event CONTRACTOR defaults on this SPPA and such default is not cured within the time permitted by this SPPA, HOST has the option to obtain clear title and exclusive possession of the System pursuant to Section 11.4 of the SLA.

**11.5. Lender's Rights.** In the event of a default by CONTRACTOR under this SPPA, Lenders shall have the same rights as provided in the SLA. HOST shall not take any action to terminate this SPPA because of any default or breach by CONTRACTOR if any Lender, within thirty (30) calendar days after service of written notice adheres to the procedures set forth for Lender's Rights in the SLA.

**11.6. CONTRACTOR's Remedies.** If any default by HOST shall continue uncured following notice of default as required by this SPPA, CONTRACTOR's sole remedies are the following:

**11.6.1. CONTRACTOR's Termination of SPPA.** Except as specifically provided otherwise in this SPPA, if HOST defaults under this SPPA, CONTRACTOR shall have the right to immediately terminate this SPPA. In that event, Termination under this subsection shall not relieve HOST from the obligation to pay any sum then due to CONTRACTOR or from any claim for damages previously accrued or then accruing against HOST. Upon any termination of this SPPA under this

subsection, HOST shall execute such documents as CONTRACTOR may request to memorialize the Termination and to release CONTRACTOR from the terms and conditions of this SPPA.

**11.6.2. Actual Damages According to Proof.** If CONTRACTOR elects to terminate this SPPA due to HOST default, CONTRACTOR shall fulfill its obligation under Section 11.1 of the SLA and thereafter HOST shall pay CONTRACTOR any actual damages established according to proof that may be due pursuant to Section 11.6.3, below. The payment of actual damages shall be the sole remedy available to CONTRACTOR under this SPPA or the SLA for a default by HOST.

**11.6.3.** Upon termination of this SPPA for default of HOST, CONTRACTOR shall remove the System and restore the Licensed Area to its original condition, less normal wear and tear, pursuant to Section 11.1 of the SLA. After CONTRACTOR has removed the System and restored the Licensed Area, HOST shall pay CONTRACTOR actual damages established according to proof within one hundred eighty (180) calendar days of the DGS's acceptance of the removal of the System and restoration of the Licensed Area.

## **12. FORCE MAJEURE**

**12.1. Early Termination Due to Force Majeure.** If a Force Majeure occurs, the affected Party shall promptly provide written notice to the other Party describing the nature of the event; the length of time it is expected to continue; and efforts, planned or under way, to overcome the effects of the event. The Parties shall cooperate in good faith to overcome the effects of the Force Majeure. The obligations of each Party shall be suspended for the continuance of any inability to perform caused by a Force Majeure, but for no longer period. If a Force Majeure prevents a Party from performing its obligations under this SPPA and such event continues for more than 365 days, then, except as provided in Section 12.2 hereof, either Party may terminate this SPPA, neither Party shall be in default and HOST shall not be obligated to pay actual damages.

**12.2. Capacity Reduction.** If a Force Majeure occurs that reduces the EEP of the System and CONTRACTOR determines the System cannot, within ninety (90) calendar days, be restored to a capacity sufficient to satisfy its obligations under this SPPA, CONTRACTOR shall give HOST written notice of such determination as soon as possible. If CONTRACTOR demonstrates to HOST's reasonable satisfaction that the System can, within ninety (90) calendar days, be repaired and restored such that the System can deliver at least fifty percent (50%) of the applicable EEP for the remaining Term, then CONTRACTOR may elect to prosecute such repairs as necessary to deliver at least 50% of the applicable EEP for the remaining Term. CONTRACTOR must notify HOST of such election in writing, which notice must specify the procedures and dates for the planned repairs. If CONTRACTOR so notifies HOST of such election, the Parties agree to amend the provisions in this SPPA relating to or derived directly from EEP, including the GEP, to reflect the capacity of the System that remains operable after CONTRACTOR's repairs pursuant to this section. No other terms or conditions in this SPPA shall be changed and the Term shall not be extended.

### **13. CONTRACTOR INDEMNIFICATION**

**13.1. CONTRACTOR Indemnity.** CONTRACTOR shall indemnify, defend and hold harmless HOST, and its officers, agents and employees from and against any claims, damages, or expenses, including an amount equal to reasonable attorney's fees, and liabilities arising out of or in any way connected with this SPPA for claims, damages, expenses, or liabilities for loss or damage to any property, or for any death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, or liabilities arising from the negligence or willful acts or omissions of CONTRACTOR, or its officers, agents, employees, assigns and successor.

### **14. OTHER TERMS AND CONDITIONS**

**14.1. Approval.** This SPPA is of no force or effect until signed by both CONTRACTOR and HOST, approved by the DGS, and the SLA has been duly executed and approved. CONTRACTOR may not commence performance until such approvals have been obtained.

**14.2. Taxes.** CONTRACTOR, its successor and assigns, shall pay all taxes, including possessory interest or other tax, assessments or charges that may at any time be levied upon any interest in System or this SPPA. HOST will not pay municipal energy or utility users' taxes or franchise fees on Electricity purchased from CONTRACTOR as a private on-site solar energy provider. CONTRACTOR shall pay all such taxes, assessments, or other charges as and when required by the taxing authority. To the extent any such taxes are levied on HOST with respect to purchases of Electricity from CONTRACTOR, CONTRACTOR shall reimburse HOST for such taxes within thirty (30) calendar day written notice by HOST to CONTRACTOR of such taxes and amounts thereof.

**14.3. Notices.** Except as otherwise expressly provided in this SPPA, all notices and other communications to be given or made under this SPPA shall be in writing and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. Notices may also be delivered by electronic mail to the email address indicated below or by facsimile to the telefacsimile numbers set forth below provided that the originator verifies that recipient has received such notice and originator delivers a copy of such notice to recipient using the means in the first sentence of this paragraph as soon as possible. All such notices or other communications shall be deemed received upon the earlier of:

- (i) Personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice.
- (ii) Mailed as provided above, on the date of receipt or rejection.
- (iii) Given by electronic email or facsimile, when received by the other party if received between Monday through Friday between 9:00 a.m. and 5:00 p.m. so long as such day is not a State or federal holiday and otherwise, on the next day, provided that if the next day is a Saturday, Sunday, or a State or federal holiday, such notice shall be effective on the following business day.

To CONTRACTOR:  
CONTRACTOR:  
TITLE:  
ADDRESS:  
PHONE:  
FAX:  
EMAIL:

Copy to Lender/System Lessor:  
LENDER:  
ADDRESS:  
PHONE:  
FAX:  
EMAIL:

To HOST:  
HOST:  
ATTN:  
TITLE:  
ADDRESS:  
PHONE:  
EMAIL:

To DGS:  
DEPARTMENT OF GENERAL SERVICES  
ATTN:  
TITLE:  
ADDRESS:  
PHONE:

**14.4. CONTRACTOR Certification.** If CONTRACTOR is a different party from LICENSEE under the SLA, this SPPA shall not be effective unless and until CONTRACTOR has executed California's CCC-307 Certification, attached as Exhibit M to the SLA, separate from the CCC-307 executed by LICENSEE under the SLA. CONTRACTOR warrants that it will be in continual compliance with the provisions in the CCC-307 Certification throughout the Term of this SPPA. Parties acknowledge that Provision 5 of CCC 307 (Contracts for Legal Services \$50,000 or More – Pro Bono Requirement) is not applicable to this SPPA or the SLA.

**14.5. Recycling Certification.** CONTRACTOR shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. CONTRACTOR may certify that the product contains zero recycled content (PCC 10233, 10308.5, 10354).



- 14.6. Continued Operations.** CONTRACTOR shall continue to deliver energy and fulfill its obligations under this SPPA during the period of any dispute between the Parties.
- 14.7. Compensation.** The consideration to be paid CONTRACTOR, as provided herein, shall be in compensation for all of CONTRACTOR's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
- 14.8. Antitrust Claims.** CONTRACTOR by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, CONTRACTOR shall comply with the requirements of the Government Codes Sections set out below:
- 14.8.1.** "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 14.8.2.** "Public purchasing body" means the State or the subdivision or agency making a public purchase as per Government Code Section 4550.
- 14.8.3.** In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder as per Government Code Section 4552.
- 14.8.4.** If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery as per Government Code Section 4553.
- 14.8.5.** Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action as per Government Code Section 4554.
- 14.9. Counterparts.** This SPPA may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. CONTRACTOR avers that it will not enter into any arrangement with any third party which might abridge any rights of HOST under this SPPA.

**14.10. Authority.** The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this SPPA.

## **EXHIBIT C - FORMAT FOR CONTRACTOR ELECTRICITY INVOICE**

### **1. Invoice for current Billing Cycle:**

Meter Readings:

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Quantity Delivered: \_\_\_\_\_ kWh

Unit Price: \$\_\_\_\_\_

Invoice Amount Due for Billing Cycle: \$\_\_\_\_\_

### **2. TOU Delivery Periods for Current Billing Cycle**

Season: \_\_\_\_\_

Peak hours: \_\_\_\_\_ kWh

Mid-peak hours: \_\_\_\_\_ kWh

Off-peak hours: \_\_\_\_\_ kWh

Total kWh: \_\_\_\_\_ kWh

### **3. CONTRACTOR Performance Current Contract Year to Date**

Contract Year: \_\_\_\_\_

Contract Year EEP: \_\_\_\_\_ kWh

Month kWh Billed

Month kWh Billed

Month 1

Month 7

Month 2

Month 8

Month 3

Month 9

Month 4

Month 10

Month 5

Month 11

Month 6

Month 12

\_\_\_\_\_  
Total kWh Billed YTD: \_\_\_\_\_