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| --- | --- | --- | --- | --- | --- |
| **SOLAR POWER PURCHASE AGREEMENT FOR SOLAR PHOTOVOLTAIC AND BATTERY ENERGY STORAGE SYSTEMS (this “SPPA”)** | | | | | |
| Rev 12/2021 | | | AGREEMENT NUMBER | | |
|  | | | @ | | |
|  | | |  | | |
| 1. This SPPA is entered into between the **Judicial Council of California** (“Judicial Council” or “Council”) and **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 (“System”) unless terminated earlier pursuant to the provisions in this SPPA or the Site License Agreement for Photovoltaic System (“SLA”). | | | | | |
|  | | | | | |
| 3. The maximum amount the Council may pay Contractor under this SPPA is: $[@AMOUNT]. 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 | |
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|  |  |
| --- | --- |
| **JUDICIAL COUNCIL’S SIGNATURE** | **CONTRACTOR’S SIGNATURE** |
| **Judicial Council of California** | CONTRACTOR’S NAME *(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)*    **@** |
| BY *(Authorized Signature)*  ? | BY *(Authorized Signature)*  ? |
| PRINTED NAME AND TITLE OF PERSON SIGNING | PRINTED NAME AND TITLE OF PERSON SIGNING | |
| DATE EXECUTED | DATE EXECUTED |
| ADDRESS    Branch Accounting and Procurement  455 Golden Gate Avenue, 6th Floor  San Francisco, CA 94102 | ADDRESS  @ |

**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 Judicial Council 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 Judicial Council, together with Contractor, have on the same date herewith executed a Site License Agreement (“SLA”), Agreement Number \_\_\_\_\_\_\_\_, under which the Judicial Council has licensed the Licensed Area to Contractor;

**WHEREAS,** pursuant to the SLA, Contractor is permitted non-exclusive and revocable limited access to the Licensed Area for the generation, delivery, and/or sale of Electricity to the Judicial Council 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:

*(The remainder of this page intentionally left blank.)*

**EXHIBIT B – SPPA TERMS AND CONDITIONS**

**Table of Contents**

[1. DEFINITIONS AND TERM 2](#_Toc92984209)

[2. SALE OF ELECTRICITY 2](#_Toc92984210)

[3. SYSTEM INVOICING AND PAYMENT 3](#_Toc92984211)

[4. FUNDING AVAILABILITY 5](#_Toc92984212)

[5. METERING 5](#_Toc92984213)

[6. CONTRACTOR’S PV SYSTEM AND BESS GUARANTEES 6](#_Toc92984214)

[7. OPERATIONS AND MAINTENANCE 9](#_Toc92984215)

[8. JUDICIAL COUNCIL OBLIGATIONS 13](#_Toc92984216)

[9. SYSTEM MALFUNCTIONS, SHUTDOWNS AND EMERGENCIES 15](#_Toc92984217)

[10. ASSIGNMENT 16](#_Toc92984218)

[11. DEFAULT 19](#_Toc92984219)

[12. FORCE MAJEURE; CAPACITY REDUCTION; DEMAND REDUCTION 22](#_Toc92984221)

[13. CONTRACTOR INDEMNIFICATION 23](#_Toc92984222)

[14. OTHER TERMS AND CONDITIONS 23](#_Toc92984223)

# **DEFINITIONS AND TERM**

## **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.

## **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.

# **SALE OF ELECTRICITY**

## **Purchase/Sale of Electricity.** Contractor will provide to the Judicial Council all Electricity generated and delivered by the solar photovoltaic system (“PV System”) at a price per kilowatt-hour for the term of this SPPA and as otherwise specified in this SPPA. The Judicial Council shall purchase up to the Expected Electricity Production (“EEP”), as set forth in this SPPA, for each Contract Year provided that Contractor delivers such amount of Electricity to the Electrical Interconnection Point in accordance with this SPPA. The Judicial Council’s purchase obligation is subject to the limitation set forth in Section 12.3. The Judicial Council shall not be obligated to purchase any kWh in excess of the EEP unless, in the sole judgment of the Judicial Council, the Judicial Council can use such excess Electricity to offset its loads either directly or through net metering and the cost is less than that charged by the Utility.

## **Electricity Price.** The pricing for Electricity shall be the Fixed Price of $\_\_\_\_\_\_ per kWh for the duration of the Contract. Electricity price per kWh shall be fully inclusive of the PV System and battery energy storage systems (“BESS”) as defined in the accompanying SLA, Exhibit C, Technology Description. Contractor shall provide to the Judicial Council all Electricity produced by the PV System at the Electrical Interconnection Point at the Fixed Price per kilowatt-hour.

## **Standby and Other Charges.** Contractor shall be liable for and shall pay all charges imposed on or incurred by the Judicial Council including Standby Charges and Departing Load charges based on the kWh of electrical energy produced by the PV System. If these charges are present on the Judicial Council’s utility bill, these charges shall be deducted from the Contractor invoice for the month following the date such charges become due from the Judicial Council. The Judicial Council will provide backup documentation for any charged deductions.

## **Environmental Attributes and Renewable Energy Credits.** The Electricity Price includes all Environmental Attributes, including Renewable Energy Credits (RECs), which shall become the property of the Judicial Council.

### **2.4.1.** Contractor will act as the Qualified Reporting Entity and report the generation of the PV System in the WREGIS and shall provide confirmation of reporting of the RECs to the Judicial Council.

### **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 the Judicial Council will conform to the definition and attributes required for compliance with California’s renewables portfolio standard, as set forth in California Public Utilities Commission (“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.

## **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. The Judicial Council 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 the Judicial Council in connection with the System. Nothing in this Section 2.5 is intended to change or modify the Judicial Council’s rights and interests in all Environmental Attributes other than the RECs as provided in Section 2.4.

# **SYSTEM INVOICING AND PAYMENT**

## **Amounts Due.** The invoiced amount due from the Judicial Council to Contractor for each Billing Cycle for Electricity delivered to the Electrical Interconnection Point shall be:

A = P x 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 Judicial Council in kWh for the Billing Cycle per the Meter.

## **Invoicing.** Contractor shall deliver to the Judicial Council an invoice for each Billing Cycle within fifteen (15) Business Days of the close of the Billing Cycle to the address set forth in Section 14.3 of this SPPA. Each invoice shall contain all the information required by Exhibit C and shall state the charges and the amounts due to Contractor for Electricity delivered to the Judicial Council by the System.

## **Net Energy Metering.** The Parties acknowledge that the System shall be designed, constructed, and operated to provide net metering capability and all billings shall be pursuant to the Net Energy Metering tariff applicable to the Judicial Council 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 the Judicial Council and Contractor shall assist the Judicial Council 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 the Judicial Council pay for electricity that is not delivered to the Judicial Council as measured by the Meter at the Electrical Interconnection Point, nor shall the Judicial Council be required to purchase Electricity from Contractor in excess of the EEP for such year.

## **Sales of Excess Electricity.** If Applicable Laws allow Contractor or the Judicial Council to sell Electricity produced in excess of the Judicial Council’s on-site usage during defined periods, the Judicial Council shall have the sole right to determine whether or not to sell such excess Electricity. If the Judicial Council decides to sell such excess Electricity, Contractor shall cooperate with the Judicial Council in effecting such sales provided that such assistance does not materially increase Contractor’s operating or administrative costs. If the Judicial Council 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 the Judicial Council shall be entitled to 100% of the revenues or credits from such sales. The Judicial Council shall be required to pay Contractor the rates set forth in the SPPA for all Excess Electricity sold by the Judicial Council pursuant to this Section.

## **Invoice Remittance.** The Judicial Council shall pay invoices to Contractor by check, wire transfer or electronic funds transfer within forty-five (45) days of receipt of an undisputed invoice.

## **Invoice Disputes.** In the event the Judicial Council disputes all or any part of any invoice submitted by Contractor under this SPPA, the Judicial Council shall nevertheless pay the undisputed portion of the invoice, and shall endeavor to notify Contractor in writing within ninety (90) 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 the Judicial Council has underpaid Contractor, the Judicial Council shall promptly pay the amount due to Contractor. If upon determination of the correct billing amount it is determined that the Judicial Council has overpaid, Contractor shall promptly credit to the Judicial Council the amount of overpayment.

## **Access to Records.** Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this SPPA. If requested, a Party shall provide to the other Party statements evidencing the quantity of Electricity delivered at the Electrical Interconnection Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

## **Annual Reporting.** Within sixty (60) calendar days after the end of each Contract Year Contractor shall submit to the Judicial Council, in a format reasonably acceptable to the Judicial Council, 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.

# **FUNDING AVAILABILITY**

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

## **Funding Requirement for Electricity.** It is mutually agreed that if the State Legislature does not appropriate sufficient funds for the Judicial Council to purchase Electricity under this SPPA, the obligations of the Judicial Council under this SPPA shall be suspended during the continuation of such non-appropriation event or amended to reflect any reduction of appropriated funds. The Judicial Council 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. The Judicial Council will promptly notify Contractor if it appears likely that a non-appropriation event will occur. The Judicial Council shall allocate any lawfully available funds for the purchase of Electricity hereunder.

# **METERING**

## **Interval Data Recording Meter.** Contractor shall measure the actual amount of Electricity delivered to the Judicial Council and/or exported electricity in parallel to the utility grid through the NEM interconnection by the PV 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(s) 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 the Judicial Council with the ability to connect the Meter(s) to the Judicial Council’s energy management system for the purpose of incorporating System electrical output data into the Judicial Council’s energy usage database (or comma separated value data file) or Building Automation System. Contractor understands that this is a necessary capability in the event that the Judicial Council requires real time monitoring of the Judicial Council’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 the Judicial Council is a participant. Contractor shall be responsible for connecting the Meter (s) to the Electrical Interconnection Point and all costs therefor. The Judicial Council’s connection of the Meter(s) to its energy management system shall be performed at its own expense, and at a location and in such manner, as mutually agreed with Contractor.

**5.**1.1 **Solar Monitoring Points.** The solar metering for the PV System should be able to report the following data points as a minimum and comply with the requirements of Section 5.1 above:

“R” “Total Renewable generation on-site”

“R ex” “Renewable Energy exported to the grid”

“G” “Grid energy sent to building”

“N” “NEM net consumption of grid electricity accounting for exports”

“Ru” “Solar Energy utilized onsite“

**5.1.2 BESS Monitoring.** BESS Monitoring is specified in SLA, Attachment E, Exhibit C.1, Section 4.8 and should also comply with Section 5.1 above.

## **Website.** Contractor shall post meter readings and 15-minute, real time, interval data to a password protected website and make this website available to the Judicial Council. The internet-based data platform will need to allow exporting to CSV or Excel, and PDF formats for reporting purposes.

## **Meter(s) Calibration.** Contractor shall have the Meter tested every two years at Contractor’s expense by a certified independent third party approved by the Judicial Council. The Judicial Council shall be allowed to observe the Meter test, and Contractor shall provide notice of the testing to the Judicial Council at least ten (10) Business Days prior to the test date. Contractor shall provide signed copies of the results of the Meter test to the Judicial Council. In addition to the bi-annual test, Contractor shall test the Meter at any reasonable time upon the request of the Judicial Council. The Judicial Council shall reimburse Contractor for the cost of any test requested by the Judicial Council, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances, as defined in ANSI Standard C12.20-2015 (or its successor), or as defined by the CPUC for Meter calibration and operation.

## **Meter(s) 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 the full period. Adjustments which benefit the Judicial Council 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 the Judicial Council.

# **CONTRACTOR’S PV SYSTEM AND BESS GUARANTEES**

## **Guaranteed Electricity Production.** Contractor represents that it will ensure that the PV System installed will deliver to the Judicial Council 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 the Judicial Council 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), as set forth in the table below.

Table 1, Contract Expected Electricity Production and Output Guarantee in kWh AC

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Contract Year | Expected Electricity Production (EEP) | Guaranteed Electricity Production (GEP) | Contract Year | Expected Electricity Production (EEP) | Guaranteed Electricity  Production (GEP) |
| 1 |  |  | 11 |  |  |
| 2 |  |  | 12 |  |  |
| 3 |  |  | 13 |  |  |
| 4 |  |  | 14 |  |  |
| 5 |  |  | 15 |  |  |
| 6 |  |  | 16 |  |  |
| 7 |  |  | 17 |  |  |
| 8 |  |  | 18 |  |  |
| 9 |  |  | 19 |  |  |
| 10 |  |  | 20 |  |  |

## **6.2** **Guaranteed Battery Storage Capacity**. Contractor represents that it will ensure that the BESS installed will have storage capacity available to the Judicial Council no less than the amount of Electricity in kWh DC defined as the Expected Energy Storage Capacity (EESC), for each Contract Year, as set forth in Table 2 below. Contractor warrants and guarantees that it shall make available electrical storage capacity to the Judicial Council equivalent to the amount of Electricity in kWh DC for each Contract Year that equals or exceeds the Guaranteed Usable Energy Storage Capacity (GUESC) , as set forth in Table 2 below.

Table 2 Guaranteed Battery Storage Capacity

| Battery Storage Capacity in kWh DC | | | | | |
| --- | --- | --- | --- | --- | --- |
| Contract Year | Expected Energy Storage Capacity  (“EESC”) | Guaranteed Usable Energy Storage Capacity (“GUESC”) | Contract Year | Expected Energy Storage Capacity (“EESC”) | Guaranteed Energy Storage Capacity (“GUESC”) |
| 1 |  |  | 11 |  |  |
| 2 |  |  | 12 |  |  |
| 3 |  |  | 13 |  |  |
| 4 |  |  | 14 |  |  |
| 5 |  |  | 15 |  |  |
| 6 |  |  | 16 |  |  |
| 7 |  |  | 17 |  |  |
| 8 |  |  | 18 |  |  |
| 9 |  |  | 19 |  |  |
| 10 |  |  | 20 |  |  |

## **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 the Judicial Council an amount equal to the cost savings the Judicial Council did not realize by reason of the failure of Contractor to meet the GEP for that Contract Year. Contractor shall report to the Judicial Council within sixty (60) calendar days after the end of each Contract Year, the total Electricity produced by the PV 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 the Judicial Council beginning with the fourth (4th) calendar month of the then current Contract Year, and continuing each month thereafter, until the total amount is fully credited to the Judicial Council. (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 the Judicial Council during such period for use at the Facility, divided by the aggregate amount the Judicial Council is required to pay the local utility with respect to such period.) In the event the amount of the credit due to the Judicial Council exceeds the amount due from the Judicial Council for Electricity supplied to the Judicial Council and the credit is not exhausted within four Billing Cycles, Contractor agrees to remit the un-exhausted credit to the Judicial Council , upon its request.

## **Guaranteed Battery Storage Capacity Failure**. Beginning with the second Contract Year, if Contractor fails to meet the GUESC for any Contract Year, Contractor agrees to credit the Judicial Council an amount equal to the cost savings the Judicial Council did not realize by reason of the failure of Contractor to meet the GESC for that Contract Year. Contractor shall report to the Judicial Council within sixty (60) calendar days after the end of each Contract Year, the total Storage capacity made available by the PV System during the prior Contract Year and the amount, if any, of any storage capacity shortfall below the GUESC. Contractor shall calculate and report the amount of cost savings that such shortfall amount of storage capacity would have produced, compared to the active blended Utility Rate or the 12 months in question. Contractor shall credit that amount to the Judicial Council beginning with the fourth (4th) calendar month of the then current Contract Year, and continuing each month thereafter, until the total amount is fully credited to the Judicial Council. (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 the Judicial Council during such period for use at the Facility, divided by the aggregate amount the Judicial Council is required to pay the local utility with respect to such period.). In the event the amount of the credit due to the Judicial Council exceeds the amount due from the Judicial Council for Electricity supplied to the Judicial Council and the credit is not exhausted within four Billing Cycles, Contractor agrees to remit the un-exhausted credit to the Judicial Council, upon its request.

# **OPERATIONS AND MAINTENANCE**

## **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.

## **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; provided, however, if the PV System is a roof-mounted system, the Judicial Council will maintain and repair the roof as required to maintain the roof warranty, excluding any maintenance or repair caused by the independent acts or omissions of Contractor.

## **System Maintenance.** Contractor shall notify Judicial Council 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 the Judicial Council including, but not limited to, the procedures set forth in Exhibit E of the SLA (Access Procedures for Site and Licensed Area). Only SLA Permittees shall be permitted access to the Licensed Area. If the PV System is roof-mounted, Contractor shall ensure that its operation and maintenance of the PV System does not invalidate any warranty for the roof and the roof remains watertight.

## **Contractor’s Failure to Maintain.** If Contractor fails to maintain the System in good repair and operation, the Judicial Council 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, the Judicial Council 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 the Judicial Council shall be paid promptly by Contractor upon the Judicial Council’s submittal of the work invoices to Contractor, or the Judicial Council may deduct the amount expended from invoices submitted to the Judicial Council by Contractor for amounts due Contractor for Electricity delivered to the Judicial Council.

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

**7.5.1** The PV System components must comply with all standards relevant to the operation and installation of solar photovoltaic and battery energy storage equipment by UL or another nationally recognized testing facility. Design and installations shall conform to all requirements of the California Building Standards Code (Cal. Code Regs., Title 24). 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:

(i) IEEE 929-2000, “Recommended Practice for Utility Interface of Photovoltaic Systems”;

(ii) UL Subject 1741, “Standard for Static Inverters and Charge Controllers for use in Photovoltaic Power Systems”; and

(iii) Any and all requirements as listed by the CSI incentive program and/or the CEC for the installation of PV Systems.

(iv) The PV 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.

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

(i) ANSI C12.1-2008; (electricity metering)

(ii) ASME PTC 50 (solar PV performance)

(iii) ANSI Z21.83 (solar PV performance and safety)

(iv) NFPA 70 (including NFPA 70E Arc flash,)

(v) IEEE 1547 (interconnections)

**7.5.3** The BESS, its installation, and on-site testing shall conform to all requirements of the California Building Standards Code and as well as additionally conform, but not limited to, the following industry standards:

(i) UL 9540

(ii) UL 9540A

(iii) UL 1741

(iv) UL 1642

(v) UL 1973

(vi) IEC 62897

(vii) IEEE 1547

## **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 the Judicial Council a report indicating the nature and cause of the outage and the steps taken by Contractor to correct the problem.

## **Permits.** Contractor is responsible at its sole cost to obtain all permits necessary for the maintenance and operation of the System. Contractor shall provide the Judicial Council with electronic copies of all permits, approvals, and conditions issued by applicable federal, state, and local governmental entities, including the Utility.

## **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 the Judicial Council shall have no obligation whatsoever to provide guard services or other security measures for the benefit of Contractor. Contractor assumes all responsibility for the protection of Contractor and Permittees and the property of Contractor and Permittees from acts of third parties.

## **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.

## **Judicial Council 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 Judicial Council 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 the Judicial Council promptly for any changes in those procedures.

## **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 the Judicial Council. If Contractor fails to promptly remove the lien, in addition to its other remedies under this SPPA, the Judicial Council 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 the Judicial Council against all costs and expenses including reasonable attorneys’ fees and court costs incurred in discharging and releasing any such lien.

## **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, the Judicial Council’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.

## **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 the Judicial Council any death, lost time injury, or property damage to Judicial Council property that occurs within the Licensed Area or the Site or as part of Contractor’s operation of the System on the Licensed Area.

## **Notice of Damage.** Contractor shall promptly notify the Judicial Council 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 the Judicial Council’s operations.

## **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.

## **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 the State, the Judicial Council, 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 Permittees at or on the Licensed Area. In addition, Contractor shall reimburse the Judicial Council for any and all costs related to investigation, clean up, and/or fines incurred by the Judicial Council for non-compliance with environmental laws that are caused by Contractor or Permittees at or on the Licensed Area. The Judicial Council reserves the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials and environmental laws.

## **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 the Judicial Council regarding any alleged violation.

## **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 the State and the Judicial Council 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 the State and the Judicial Council harmless from loss, expense, claim, or cost on account thereof.

## **Customer Service Support.** Contractor will provide customer service support accessible to the Judicial Council 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 the Judicial Council messages on this designated customer service voice mail system within twenty-four (24) hours of the Judicial Council call.

# **JUDICIAL COUNCIL OBLIGATIONS**

## **General.** Subject to any specific limitations stated herein, during the Term of this SPPA, the Judicial Council shall endeavor 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. The Judicial Council shall further endeavor to maintain the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property, to maintain in good working order and available at all times, its connection and service contract(s) with the Utility so that the Judicial Council can, upon any suspension or interruption of Electricity from the System, obtain electricity from a Utility. All obligations of the Judicial Council under this SPPA regarding maintenance shall be subject to the right of the Judicial Council 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.

## **Restrictions on Shading.** Parties agree that the Judicial Council shall make good faith efforts to avoid activities which result in overshadowing or shading of the PV System in a manner that would prevent Contractor from meeting its obligations under this SPPA. In the event the Judicial Council activities result in the PV System being overshadowed in a manner which prevents Contractor from meeting its EEP on an annualized basis, the Judicial Council will make all reasonable efforts to resolve the shading issue. If that is not possible, the Parties will proceed as described in Section 12.3 Demand Reduction of this Exhibit B. Contractor shall provide and justify data verifying the actual loss of generation that occurred due to shading. At the Judicial Council’s request, Parties may agree to make reasonable efforts to relocate the PV System at the Judicial Council’s cost to a mutually agreeable location. If the Parties cannot agree on an alternative location for the PV System, then the Parties agree that at the Judicial Council’s option, the Judicial Council may terminate this SPPA, in which case Contractor shall remove the PV System pursuant to Section 11.1 of the SLA, and subsequent to such removal and restoration of the Licensed Area the Judicial Council shall pay any actual damages that may be required pursuant to Section 14 of the SLA.

## **No Control Over Shading.** Parties agree that in the event of shading which results from actions outside of the control of the Judicial Council 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 the Judicial Council or Contractor, the following provisions shall apply:

### **8.3.1. Relocation.** Contractor and the Judicial Council shall attempt in good faith to find another location where Contractor could move the PV 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 PV 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 PV 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 PV 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.

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

## **Judicial Council System Repair Costs.** If the Judicial Council damages the System as a result of Judicial Council operations, maintenance, repairs, or renovations, and for reasons other than an event that constitutes a Force Majeure, the Judicial Council shall reimburse Contractor reasonable costs to repair the damage to the System. If, in its sole opinion, the Judicial Council deems the costs to repair the System as unreasonable, then the Judicial Council may elect to terminate this SPPA and Contractor shall remove the System in accordance with Section 11.1 of the SLA and the Judicial Council shall pay Contractor actual damages established according to proof as may be required pursuant to Section 14 of the SLA.

## **Notice for Inspections.** The Judicial Council shall be permitted access to inspect the System upon twenty-four (24) hours’ prior written notice to Contractor. The Judicial Council 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 the Judicial Council personnel on all non-emergency inspections. This requirement in no way prohibits the Judicial Council from inspecting any and all portions of the Site and Licensed Area at any time.

# **SYSTEM MALFUNCTIONS, SHUTDOWNS AND EMERGENCIES**

## **System Malfunctions.** The Judicial Council 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.

## **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 the Judicial Council’s 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 or any permits required to perform the repairs. In the event Contractor must repair the System and requires Judicial Council personnel or service provider to be present after normal business hours, Contractor shall reimburse the Judicial Council for all costs for after-hours access to the Site and Licensed Area and shall bear all costs to repair the System.

## **System Emergencies**

### **9.3.1. Notification.** Contractor and the Judicial Council 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 the Judicial Council’s access procedures in Exhibit E of the SLA.

### **9.3.3. Disconnection of System by the Judicial Council.** In case of emergency in which the Judicial Council 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 the Judicial Council may disconnect the System from the Licensed Area prior to notification of Contractor. The Judicial Council will notify Contractor if the Judicial Council 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 the Judicial Council pursuant to this section. In no event shall the Judicial Council be liable for any damage for actions taken by the Judicial Council in the event of an emergency.

## **System Shutdowns**

### **9.4.1. Scheduled Shutdown.** If Contractor schedules a shutdown of the System, Contractor shall notify the Judicial Council 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 the Judicial Council as soon as possible. For any shutdown which duration exceeds twenty-four (24) hours, Contractor shall be required to notify the Judicial Council of the cause and time of expected resumption of operation of the System.

## **Facility Temporary Shutdown.** During the Term, the Judicial Council shall be entitled to shut down the System in order to perform maintenance, repairs, and renovations to the Facility. The Judicial Council will work in good faith with Contractor to minimize the impact of such shutdowns on Contractor’s operations to the extent practical in the Judicial Council’s sole reasonable judgment. The Parties agree there shall be no impact on Contractor’s operations if any such shutdowns occur during the hours of 8 p.m. to 6 a.m. on any day. All such shutdowns outside of the hours of 8 p.m. to 6 a.m. shall be tracked and reported in the annual report to the Judicial Council in accordance with Section 3.8.

In the event of any such shutdown, at the time of the annual System performance evaluation pursuant to Sections 3.8 and 6.1 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 the Judicial Council for the time period in which the system was shut down for maintenance, repair and renovations to the Facility. The Judicial Council 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 the Judicial Council during the shutdown period, or consider such other mechanism negotiated by the Parties.

# **ASSIGNMENT**

## **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 the Judicial Council and upon such reasonable terms and conditions that the Judicial Council may require. The Judicial Council’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 the Judicial Council 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 the Judicial Council. No such assignment shall relieve Contractor of its obligations under this SPPA unless the Judicial Council 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 the Judicial Council’s 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 the Judicial Council, 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.

## **Judicial Council Approval.** Contractor acknowledges that the Judicial Council are relying upon the unique expertise and capability of Contractor. Any assignment of this SPPA shall be subject to the written approval of the Judicial Council, which approval shall not be unreasonably withheld. Contractor shall provide the Judicial Council 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 the Judicial Council 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 the Judicial Council determines in its sole reasonable judgment that those standards are satisfied, it shall approve such proposed assignment. In the event the Judicial Council determines in its 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, the Judicial Council shall promptly give Contractor written notice of such determination and Contractor shall be prohibited from making such assignment. The Judicial Council shall notify Contractor within thirty (30) calendar days after the Judicial Council’s receipt of Contractor’s notice of a proposed assignment and supporting documentation as to whether or the Judicial Council approves of the proposed assignment. In the event the Judicial Council does 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.

## **Collateral Assignment.** The Judicial Council 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 Judicial Council 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 Judicial Council and the SPWB, agree to consider such requests in good faith, but the Judicial Council 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 Judicial Councilor the SPWB, each in its sole judgment, determines that such changes are detrimental to the Judicial Council or the SPWB.

## **Contractor’s Default Under Financing Agreements.** Contractor agrees to request that any Lender notify the Judicial Council in writing of any default of Contractor under any agreement with Lender regarding the System. If the Lender notifies the Judicial Council 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, the Judicial Council 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 Contractor further that the Lender has included in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of the Judicial Council 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 the Judicial Council determines in its sole reasonable judgment that those standards are satisfied, the Judicial Council 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 the Judicial Council determines in its 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, the Judicial Council shall promptly give the Lender written notice of the Judicial Council’s determination and Lender and Contractor shall be prohibited from making such assignment.

# **DEFAULT**

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

# **11.1.1.** Failure of the Judicial Council to pay the undisputed monthly charges of Contractor under the following circumstances, (i) if the Judicial Council fails to pay the undisputed monthly charges of Contractor for a period of sixty (60) calendar days or more, Contractor shall provide the Judicial Council with a sixty (60) day notice to cure, (ii) the Judicial Council 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 the Judicial Council not been in breach, (iii) all Cure Extension Payments shall be credited against amounts otherwise due from the Judicial Council, (iv) if the breach is not cured by the Judicial Council during the cure period, as may be extended by the Judicial Council, Contractor may terminate this SPPA and the SLA upon expiration of such cure period, and (v) the Judicial Council’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 Judicial Council 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 to the standards and requirements set forth in this SPPA 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 the Judicial Council or attributable to Force Majeure. The Judicial Council 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 the Judicial Council 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 the Judicial Council’s notice to Contractor regarding the interference without good cause, as determined by the Judicial Council.

## **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 the Judicial Council 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.

## **Judicial Council 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, the Judicial Council shall have the following specific remedies:

### **11.4.1. Judicial Council Termination of SPPA.** The Judicial Council shall have the right to terminate this SPPA if Contractor ceases producing Electricity for sale to the Judicial Council, or abandons the System, or fails to cure any material default within one hundred and eighty (180) calendar days after the Judicial Council gives notice to cure. Upon the Judicial Council’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 the Judicial Council 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 the Judicial Council may request to (i) memorialize the termination of this SPPA, (ii) release of the Judicial Council from all further obligations under this SPPA, and (iii) extinguish Contractor’s rights and interests in the Licensed Area.

### **11.4.2. Recovery of Damages.** The Judicial Council shall be entitled to damages equal to the amount necessary to compensate the Judicial Council 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. Judicial Council Self Help.** In the event of default by Contractor, the Judicial Council 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 the Judicial Council under the terms of this SPPA.

### **11.4.5. 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 Judicial Council may proceed directly against Contractor without necessity of exhausting remedies against such assignee.

### **11.4.6. Judicial Council 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, the Judicial Council has the option to obtain clear title and exclusive possession of the System pursuant to Section 11.4 of the SLA.

## **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. The Judicial Council 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.

## **Contractor’s Remedies.** If any default by the Judicial Council 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 the Judicial Council defaults under this SPPA, Contractor shall have the right to immediately terminate this SPPA. In that event, Termination under this subsection shall not relieve the Judicial Council from the obligation to pay any sum then due to Contractor or from any claim for damages previously accrued or then accruing against the Judicial Council. Upon any termination of this SPPA under this subsection, the Judicial Council 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 the Judicial Council’s default, Contractor shall fulfill its obligation under Section 11.1 of the SLA and thereafter the Judicial Council 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 the Judicial Council.

### **11.6.3.** Upon termination of this SPPA for default of the Judicial Council 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, the Judicial Council shall pay Contractor actual damages established according to proof within sixty (60) calendar days of the Judicial Council’s acceptance of the removal of the System and restoration of the Licensed Area.

# **FORCE MAJEURE; CAPACITY REDUCTION; DEMAND REDUCTION**

## **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 the Judicial Council shall not be obligated to pay actual damages.

## **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 the Judicial Council written notice of such determination as soon as possible. If Contractor demonstrates to the Judicial Council’s reasonable satisfaction that the System can, within ninety (90) calendar days, be repaired and restored such that the PV 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 the Judicial Council of such election in writing, which notice must specify the procedures and dates for the planned repairs. If Contractor notifies the Judicial Council 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 PV 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.

## **Demand Reduction.** If the Court is required to close or cease regular operations for twenty (20) business days or more in any given Billing Cycle, excluding regular Court holidays, as a result of a public health order, the Judicial Council shall promptly provide written notice thereof to the Contractor, hereinafter a “Demand Reduction Event.” Such notice shall include the date of commencement of the Demand Reduction Event, as well as the length of time it is expected to continue. The Judicial Council shall also provide notice of the date of cessation of the Demand Reduction Event. In any Billing Cycle in which a Demand Reduction Event occurs, the Court shall only be contractually required to purchase the amount of electricity actually used by the Court.

# **CONTRACTOR INDEMNIFICATION**

## **Contractor Indemnity.** Contractor shall indemnify, defend, and hold harmless the Judicial Council, the Court, and their respective judicial officers, 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.

# **OTHER TERMS AND CONDITIONS**

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

## **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. The Judicial Council 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 the Judicial Council with respect to purchases of Electricity from Contractor, Contractor shall reimburse the Judicial Council for such taxes within thirty (30) calendar days’ written notice by the Judicial Council to Contractor of such taxes and amounts thereof.

## **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 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:

#### Personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice.

#### Mailed as provided above, on the date of receipt or rejection.

#### Given by electronic email, 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:

EMAIL:

Copy to Lender/System Lessor:

LENDER:

ADDRESS:

PHONE:

EMAIL:

To Judicial Council:

JUDICIAL COUNCIL OF CALIFORNIA

ATTN:

TITLE:

ADDRESS:

PHONE:

## **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 Licensee’s Certifications, attached as Exhibit O to the SLA.

## **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, Section 12153, et seq. (“State Agency Buy Recycled Campaign”), 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 Section 12200 et seq. Contractor may certify that the product contains zero recycled content (Public Contract Code Section 12205).

## **Continued Operations.** Contractor shall continue to deliver energy and fulfill its obligations under this SPPA during the period of any dispute between the Parties.

## **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.

## **Counterparts.** This SPPA may be executed in counterparts (including PDF copies), each of which shall be deemed an original as against the Party signing such counterpart and which together shall constitute one and the same instrument. The Parties agree that the signature pages of this SPPA may be executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this SPPA, with such scanned and electronic signatures having the same legal effect as original signatures.

## **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.

**END OF EXHIBIT**

**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: \_\_\_\_\_\_\_\_\_\_\_\_

**END OF EXHIBIT**