

**SERVICE AND MAINTENANCE
CONTRACT**

**No. [Year-Contractor-
Order#]**

Commencement Date

Between

OWNER

and

CONTRACTOR

Name
Address c/o Soltage, LLC 66 York Street, 5th Floor
City, State, ZIP Jersey City, NJ 07302

Name
Address
City, State, ZIP

for

Site	Site	Site
Site	Site	Site
		Description Annual Service and Maintenance Contract

1. CONTRACT OVERVIEW

1.1. This Service and Maintenance Contract (hereinafter the “**Contract**”) is for service, maintenance, emergency response and system repair services (collectively, the “**Services**”) for the solar PV system(s) (each, a “**System**” and collectively, the “**Systems**”) installed at the project site or sites (each, a “**Site**” and collectively, the “**Sites**”) listed below:

- [Site]
- [Site]
- [Site]
- [Site]

1.2. Contractor agrees to provide the Services on an annually-renewable basis for up to five years and in accordance with the details, terms, conditions and prices provided herein.

2. CONTRACT SERVICES

The Services provided by Contractor under this Contract shall be as described in Sections 2.1 through 2.4 below. Services described under Sections 2.1 through 2.3 shall be subject to a fixed, lump-sum price

annually (the “**Fixed Contract Price**”). Services described under Section 2.4 shall be performed on a case-by-case basis and shall be subject to case-by-case pricing in accordance with Section 2.4.

2.1. **Energy Monitoring System (“EMS”) Alarm Response**

Contractor shall be responsible for investigating and correcting the cause of EMS alarms (“**Alarms**”) in accordance with this Section. Alarms will generally be communicated to the Contractor in two ways: (a) through the EMS maintenance portal and (b) by Email from the EMS. Contractor shall designate at least one person on its staff who shall be responsible for reviewing the EMS maintenance portal and for receiving alarm Emails from the EMS.

2.1.1. **Critical Alarms**

Critical alarms (“**Critical Alarms**”) are those Alarms indicating adverse system operation that is preventing or limiting the electricity production of the System. Critical Alarms shall require immediate investigative action by Contractor (commencing no later than the next business day after the Alarm is first reported) and with the on-site presence of technicians familiar with the system and with skills capable of inspecting, diagnosing and resolving the fault no later than two business days after the alarm is first communicated.

Critical Alarms that may be communicated (but which may be differently named) are:

- *Inverter Shutdown*
An Alarm indicating that an inverter is in an offline (shutdown) state while the environmental conditions are such that PV power can be generated at a level exceeding the inverter’s minimum operating threshold.
- *Inverter Fault(s)*
An Alarm indicating an actual or imminent failure of an inverter.
- *System Under-Production*
An Alarm indicating that the power output or energy production of the System (or a portion of the System) is determined by the EMS to be unexpectedly low when compared to the power output or energy production that would be anticipated based upon actual environmental conditions.
- *Meter Fault(s)*
An Alarm indicating a fault with the energy metering system.
- *Tracking System Fault(s)*
An Alarm indicating an actual or imminent failure of a tracking system.

2.1.2. **Non-Critical Alarms**

Non-Critical Alarms are Alarms other than Critical Alarms. Non-Critical Alarms shall be acknowledged by Contractor through the EMS portal within three (3) days of activation and shall be investigated and resolved by Contractor within 10 business days of activation.

2.1.3. **Snow-Related Alarms**

Alarms reasonably deduced to be the result of snowfall at the Sites or by snow accumulation on the System do not require on-site investigation and repair, *provided*; such Alarms do not persist after snowfall and snow accumulation is no longer present. In the event that such Alarms do so persist, then Contractor shall respond in accordance with Section 2.1 above.

2.1.4. Utility Grid Power Failure-Related Alarms

If Contractor reasonably determines that the root-cause of one or more Alarms is the failure of the utility grid, and provided that the Utility Grid failure is not itself caused by or related to the operation of the System, and provided that the Contractor's on-site assistance is not requested or required in order to aid the Utility Company in its re-energization of the utility grid, then the on-site presence of the Contractor is not required except should such Alarms remain active, or new Alarms be activated, upon re-energization of the utility grid.

2.2. Scheduled Maintenance

For each Site, Contractor shall provide regularly-scheduled maintenance services ("**Scheduled Maintenance**"), to include all labor, travel and living costs, tools, spares, materials and consumables cost, as follows:

2.2.1. Tri-annual Maintenance:

For each Site, Tri-annual maintenance shall be scheduled to occur at intervals spaced approximately 3 months apart and in the seasons of spring, summer and fall. A Tri-annual Maintenance Report, with form and content substantially the same as in Appendix A, shall be fully completed at the time of each tri-annual maintenance visit for a Site and shall be issued to Owner no later than five business days after the visit. No section of the Tri-annual Maintenance Report shall be left blank or otherwise incomplete by Contractor.

The latest date on which any Site's Tri-annual Maintenance Report shall be issued to Owner shall therefore be as follows (or the business day immediately following this date if it falls on a weekend or holiday):

- All spring reports by: June 26th
- All summer reports by: September 26th
- All fall reports by: December 26th

Tri-annual maintenance services shall include:

Modules and Racking:

- Remove any gross contamination from solar module surfaces (bird droppings, leaves, etc.)
- For rooftop systems: Remove any accumulated debris (leaves, etc.) from below and around the modules.
- Inspect modules for signs of degradation (e.g., color change, fogged glazing, delamination, warping, damaged wiring, damaged wire management system, and electrical connectors). Notify Owner, and correct all such faults. Replace irreparably damaged modules with spare modules when provided by Owner.
- Inspect racking system for any missing, damaged or misaligned module retaining fasteners and clips. Repair and replace missing clips and fasteners as necessary.
- Inspect racking system for missing or damaged structural members. Repair where necessary.
- For tracking systems, inspect actuators, motors and joints for correct operation, evidence of damage (including torn, worn or missing dust seals), and excessive wear. Perform maintenance and service in accordance with manufacturer's recommendations.

Electrical Equipment

- Inspect combiner box enclosures for signs of damage, water penetration, rusting. Seal and repair as necessary.
- Check all combiner boxes for loose or broken connections and evidence of localized heating. Correct and repair as necessary.
- Check all fuses for continuity. Replace any blown or damaged fuses.
- Check and record the open-circuit voltage of all strings at all combiner boxes. Rectify any deficiencies not reasonably attributable to irradiance variation during testing.
- Check inverter enclosures for signs of damage, water penetration, rusting etc. Visually inspect inverter filters for signs of clogging, damage or obstruction. Replace or clean filters where necessary and in accordance with inverter manufacturer's recommendations.
- Inspect and service inverters in full accordance with inverter manufacturer's recommendations.
- Inspect transformers for evidence of damage, high temperature, coolant leakage and unusual operation. Where possible, verify that transformer's tank pressure is within manufacturer's published limits.
- Inspect all other electrical equipment enclosures for signs of damage, water penetration, rusting. Seal and repair as necessary.
- Check all other electrical equipment enclosures for loose or broken connections and evidence of localized heating. Correct and repair as necessary.
- Inspect and verify correct operation of uninterruptable power supplies and backup batteries.
- Replace all consumables in accordance with equipment manufacturer's recommendations.

EMS, Monitoring and Communications Equipment

- Inspect EMS equipment enclosure(s) and meter enclosure(s) for signs of damage, water penetration etc. Repair as necessary.
- Inspect EMS weather stations and associated instruments for signs of damage. Wipe-clean pyranometers with clean cloth. Re-adjust horizontal and plane-of-array pyranometer mountings if necessary to achieve correct orientation. Verify that back-of-module temperature sensors are correctly installed and are in good thermal contact with modules. Repair as necessary.
- Inspect and verify correct operation of all data communications and handling equipment including Ethernet switches and routers, cellular communications equipment, signal converters, and communication translators and integrators.
- Verify that all devices are communicating with the EMS system.
- Record the kWh production figure for each kWh meter.

Fence and Grounds Inspection

- Remove any accumulated debris from around the inverter and/or other equipment and enclosures.
- Inspect stormwater management and control systems. Clean drains, filters, culverts, swales, pipes (etc.) as necessary to maintain good water flow and control.
- Inspect and confirm that erosion control installations are in compliance with applicable permits.
- Inspect and confirm compliance with Section 2.3 of this Contract (Landscape Maintenance). Provide photographs to verify compliance.
- Inspect all fences, including perimeter and equipment pad fences, for damage, evidence of breach or attempted breach, and vegetation overgrowth. Repair and rectify as necessary.

- Verify the presence and security of all locks, chains and other security devices. Repair and rectify as necessary.
- Verify the presence, health and condition of any screening or landscaping measures depicted on site drawings and required for compliance with third-party permits and approvals.
- For rooftop systems, check all slip-sheets, roof penetrations, flashings and surfaces within /near the array or System equipment. Note any abrasions, cuts, tears or loose seals and evidence of water ingress.

2.2.2. Annual Maintenance:

At least once annually for each Site, which may occur concurrently with a tri-annual maintenance inspection but which shall each year occur in the same season as the first year, the following additional activities shall be performed:

- Using infrared thermal imaging equipment, visually inspect the following electrical terminations for evidence of high resistance during operation (or immediately following operation and after safe isolation if visual access cannot be safely obtained during operation)
 - DC disconnect switch terminations
 - Inverter DC source-circuit terminations
 - Any other DC source-circuit terminations
 - Inverter AC output terminations
 - AC disconnect switch terminations
 - Any other AC output terminations.
 - Transformer terminations (low-voltage side)
- Where accessible, check DC and AC electrical field terminations for tightness (torque-testing where appropriate in accordance with equipment manufacturer's specifications). Tighten if necessary.
- Check string operating current for consistency in each combiner box.
- Check at least 5% of racking systems for tightness of module fastenings and structural fastenings. Tighten if necessary.

An Annual Maintenance Report, with form and content substantially the same as in Appendix B, shall be fully completed at the time of the annual maintenance visit and shall be issued to Owner no later than five business days after the visit. No section of the Annual Maintenance Report shall be left blank or otherwise incomplete by Contractor.

No later than 30 days following the Commencement Date, and for each Site, Contractor shall inform Owner of the season in which it intends to perform Annual Maintenance at each Site.

2.3. Landscape Maintenance

Contractor shall provide landscape maintenance services (“**Landscape Maintenance**”) in accordance with this Section 2.3 and as applicable to the Site and System, to include all labor, travel and living costs, tools, spares, materials and consumables costs.

It is Contractor's responsibility to perform Landscape Maintenance sufficient to comply with this Contract, which frequency of services will likely vary both seasonally and in accordance with the actual weather conditions at the Site.

Landscape Maintenance shall include:

Groundcover Vegetation

- Grass, and/or other groundcover vegetation (“**Grass**”) shall be cut to maintain the Grass height within the System and/or equipment enclosure fencelines at no greater than 12 inches total height, or no higher than the lowest edge of any solar panel, whichever height is less.
- For ground-mounted systems, Grass shall be cut within the entire perimeter fence-line(s) and including underneath solar array racks.
- Grass shall be cut in stormwater management basins, and shall be removed to prevent blockage or disruption of drains, filters, culverts, swales, pipes (etc.).
- Unless specifically agreed otherwise on a Site-by-Site basis, a minimum 36-inch wide strip shall also be cut around the exterior of all fence-lines and around any screening hedges planted adjacent to those fence-lines.
- Mulching of cut Grass is acceptable provided that; (a) a well maintained and purpose-designed mulching lawn mower is used for the purpose and, (b) the presence of the mulched cuttings would not adversely affect the future healthy growth of the Grass.
- Cut Grass shall be collected and removed from site when, if left unremoved, its presence would either; (a) adversely affect the future healthy growth of the Grass, or, (b) present a potential fire risk, or (c) block or disrupt stormwater management systems.

Weed Control

- Fences and equipment (including but not limited to panels, racking systems, inverters, transformers and switchgear) shall be kept free of weeds (including climbing plants).
- All enclosed equipment areas, for example inverter pads that are enclosed by fences, shall be kept free of weeds (including climbing plants) within the enclosed area.

Hedges and Screening Shrubs

- Hedges and screening shrubs or trees (“**Hedges**”) shall be kept trimmed to the specified heights (generally 8ft unless otherwise specified).
- Hedges shall be kept free of weeds and climbing plants.

Debris

Cut Grass, other vegetation cuttings, and other materials, consumables and/or equipment (“**Debris**”), shall not be piled, buried, composted, stored or otherwise disposed of on site. All Debris shall be removed and safely and correctly disposed of by Contractor and in accordance with applicable laws and regulations.

2.4. Emergency Response and System Repair

In the event that the System or a component thereof is damaged, has failed, or otherwise requires significant work or work that is not within normal business hours, and, *provided* that the emergency work or system repair or out-of-hours work is reasonably beyond the Services described in Sections 2.1 through 2.3 above, then Owner may, at its sole discretion, elect to resolve the problem using any of the following methods, or any combination of same:

- By instructing Contractor to attend the Site and commence repair / rectification activities necessary to resolve the problem. Such work shall be performed on a substantiated Time-and-Materials (T&M) basis, using the agreed rates specified within Section 11 of this Contract.

Contractor shall neither refuse to attend site nor perform the work unless reasonably adjudged as unsafe to do so.

- Through a warranty claim against the equipment manufacturer and/or original construction contractor
- By requesting the Contractor to provide a substantiated quotation for the remediation/rectification work necessary to resolve the problem
- By using Owner, or third-party, -supplied labor and/or materials.

In the event that the damage, failure or additional or out-of-hours work is the result of Contractor's own negligence and/or failure to perform its Services as specified in Section 2.1 through 2.3, and/or is a part of Contractor's ongoing performance guarantee or warranty obligations with respect to the System (such as there may be), then Contractor shall fully and immediately resolve the problem at its own cost.

3. INSURANCE

3.1. Contractor shall procure and maintain at its expense the following insurance coverage (the "**Contractor Required Insurance**"):

- 3.1.1. Commercial General Liability Insurance. Commercial General Liability Insurance, written on an Occurrence Form, including Completed Operations and Product Liability with the following minimum limits for Bodily Injury and Property Damage:
 - \$1,000,000 per occurrence;
 - \$2,000,000 minimum general aggregate and products/completed operations aggregate.
- 3.1.2. Contractor shall maintain further products/completed operation insurance applicable solely to its operations under the Contract. The coverages and limit requirement shown above may be provided by the Umbrella/Excess Insurance. The policy deductibles shall not be more than \$25,000 per occurrence and any required payment of the deductible shall be the responsibility of the Contractor.
- 3.1.3. Automobile Liability Insurance. Automobile liability insurance, covering all owned (as exposure exists), non-owned, and hired automobiles used in connection with the Services in an amount not less than \$1,000,000 per accident for combined bodily injury, property damage or death.
- 3.1.4. Workers' Compensation Insurance. Workers' Compensation insurance to cover statutory limits of the Workers' Compensation laws of the all states in which Projects are located including USL&H coverage, where applicable, and Employer's Liability (including Occupational Disease) coverage with limits of not less than \$1,000,000/ \$1,000,000/ \$1,000,000, which shall cover all of employees engaged at the Sites.
- 3.1.5. Umbrella/Excess Insurance. Umbrella/Excess Insurance covering claims in excess of the underlying insurance described in the above Sections 3.1.1, 3.1.2 and 3.1.3 with a \$5,000,000 minimum per occurrence and \$5,000,000 annual aggregate.
- 3.1.6. Contractor's Equipment. Contractor and all Subcontractors shall provide all risk property insurance for all property owned by or in their control which is not incorporated into the Services

for the Projects, including, without limitation, tools, equipment, materials, and temporary structures. Contractor and all subcontractors shall have the right to satisfy this requirement through self-insurance.

- 3.2. All policies of liability insurance to be maintained by Contractor shall be written or endorsed to include the following:
- 3.2.1. With respect to Worker's Compensation/Employer's Liability Insurance, General Liability, Automobile Liability and Excess/Umbrella Insurance, to provide that the insurer shall waive any right of recovery which the insurer may have or acquire against Owner and Financing Sources, their Affiliates, co-venturers, or their directors, officers, employees or agents for payment under such policies;
 - 3.2.2. Owner, Project Host, Building Owner, Financing Sources, their respective agents, employees, subsidiaries and associates, shall be named additional insured, written on ISO CG 2010 including premises coverage and CG 2037 including completed operations coverage or its equivalent, on Contractor's General Liability, Auto Liability and Excess/Umbrella Liability policies and such policies shall be endorsed to provide that such insurance as is afforded under the Contractor's policy is primary insurance as respects the Additional Insured and that any other insurance maintained by the Additional Insured is excess, non-contributing; and
 - 3.2.3. A waiver of subrogation if allowed by State Statute, as follows: "Waiver of subrogation applies as required by written contract to the Owner, Project Host, Building Owner, Financing Sources, their respective agents, employees, subsidiaries and associates."
- 3.3. Contractor shall use best efforts to require all Subcontractors to additionally procure and maintain the Contractor Required Insurance.

4. INDEMNITY

Contractor agrees to indemnify and save Owner and its directors, officers, employees, consultants, agents and servants harmless against any and all liabilities, penalties, demands, claims, causes of action, suits, losses, damages, costs and expenses (including cost of defense, settlement and reasonable attorneys' fees) which any or all of them may hereafter suffer, incur, be responsible for or pay out for claims brought against any of them for (i) bodily injuries (including death) to any person or (ii) physical damage to any tangible property; but in either case, only to the extent such injury or damage is caused by the failure to meet the Standard of Care (as defined below) or other negligent act or omission of Contractor, its Subcontractors or their employees, consultants, agents or servants in the performance of any Services hereunder. Such indemnification shall include bodily injuries or physical damage to any tangible property arising out of Contractor or Subcontractor's failure to comply with the provisions of this Contract. Upon the written request of Owner, promptly after such claim or demand is made, Contractor shall promptly defend any such demand, claim, cause of action or suit, but shall not settle any of the foregoing without Owner's consent. Owner agrees that Contractor shall not be liable to Owner under this Section for demands, claims, causes of action, suits, losses, damages, costs and expenses arising out of bodily injury (including death) to any person or damage (including loss of use) to any property to the extent primarily caused by the negligence of Owner, its directors, officers, employees, consultants, agents, or servants. The "**Standard of Care**" shall mean the highest degree of skill, care, attention, business administration, judgment, trade and professional experience with all relevant measurements, laws, regulations, customs and practices relating to

the Services on facilities similar to the Systems, regularly exercised by professional industrial engineering firms, construction firms and/or service providers in the United States when providing services of similar nature and complexity to the Services under similar conditions.

Contractor agrees to indemnify and save Owner harmless against any and all liability, loss, damage, cost and expense (including cost of defense and reasonable attorneys' fees) that Owner may hereafter pay out to another party by reason of any claims, or actions arising out of such claims, of patent, copyright or trademark infringement or the use or disclosure by Contractor or its employees of proprietary information or trade secrets of others, which claims or actions are the direct or indirect result of any Services performed hereunder; *provided*, that the provisions of this Section shall not apply to processes, methods or equipment the use of which is expressly directed by Owner.

5. SUBCONTRACTS

- 5.1. All Subcontracts shall be in accordance with the terms of this Contract insofar as applicable to the portion of the Services subcontracted; but no relationship (contractual or otherwise) is intended or implied between Owner and the Subcontractor, and such Subcontracts shall establish no such relationship.
- 5.2. Contractor shall have full responsibility for and full directing authority over the performance of the Subcontracts and shall not be relieved of its full responsibility for completion of the Services because of subcontracting any part or parts of it.
- 5.3. Contractor agrees to bind every Subcontractor by the terms, conditions and provisions of the Contract applicable to the Subcontractor's work.

6. CONTRACT TERM

Unless this Contract is earlier terminated pursuant to Section 9, the term of this Contract (the "**Contract Term**") shall commence as of the Commencement Date and shall continue in effect until December 31 of the year of the Commencement Date. The Contract Term may be extended for successive one year terms (each, a "**Renewal Term**") with the mutual agreement of the Parties but not for more than four (4) Renewal Terms. This Contract may be renewed annually by Owner, in whole or part, and at its sole discretion. Owner reserves the right to not renew the Contract.

7. CONTRACT CHANGES

- 7.1. Owner shall have the right, at any time, to request, by written notice, reasonable changes, alterations, additions or deletions in, to or from the Sites, Systems and/or Contract Services. In such event, Contractor shall submit, as soon as is reasonably practicable after receipt of such a request from Owner, a written proposal setting forth the effect upon the Fixed Contract Price. Upon Owner's request, Contractor shall provide additional backup and price breakdown necessary to explain and justify the Contractor's change proposal.

- 7.2. If Contractor's proposal is accepted by Owner, the latter shall promptly prepare and deliver to Contractor a document called a "**Change Order**" signed by an appropriate authorized representative of Owner directing that the changes shall be made upon the agreed terms. Upon delivery of a duly executed copy of the Change Order as herein before described, the Contract shall be deemed to be amended to incorporate the changes referred to therein. If a Change Order is not agreed to and executed by both parties, contractor shall not make such changes, alterations, additions or deletions to the Sites, Systems and/or Services.

8. REPRESENTATIONS AND WARRANTIES

- 8.1. Each Party represents and warrants that:

8.1.1. It is duly registered, licensed, validly existing and in good standing under the laws of the state under which it is organized and is duly registered, licensed and qualified to do business and is in good standing in all counties, municipalities and states where such registration, licensing and qualification is required to perform any part of the Services or any other obligation hereunder.

8.1.2. It is duly authorized to enter into this Contract.

8.1.3. The execution, delivery and performance of this Contract shall not constitute a breach of any provision of applicable law or contained in any agreement to which such Party is a party.

- 8.2. Each Party represents and warrants that the following warranty (the "**Warranty**") shall be provided by Contractor to Owner:

8.2.1. Contractor shall provide Services and corrective construction as may be necessary to remedy any failure of the Services to meet a warranty of conformance with the terms of this Contract and with accepted best practices in solar energy system design, construction, operation and maintenance.

8.2.2. As to all apparatuses, products and equipment manufactured by Subcontractors which are component parts of the Services furnished by Contractor hereunder, Contractor shall obtain for, and pass through to, Owner such warranties or guarantees as are obtainable from the Subcontractors of such component parts, provided that Owner shall approve such equipment warranties. Such warranties or guarantees shall extend over the longest period of time obtainable in this instance without payment by Contractor of additional consideration therefore, and Contractor shall use reasonable efforts to require its subcontractors to fulfill the obligations of their warranties or guarantees on such apparatus or products.

8.2.3. As to all apparatuses and products provided directly by Owner which are component parts of the Services furnished by Contractor hereunder (the "**Excluded Materials**"), Owner shall obtain warranties and guarantees for the Excluded Materials directly from the subcontractor, manufacturer or supplier of the Excluded Materials, as applicable. Contractor shall not be responsible for obtaining guarantees associated with the Excluded Materials. However, Contractor's Warranty must be inclusive of the Excluded Materials as delivered and as accepted by Contractor, provided however that Owner has delivered to Contractor a copy of said warranties and guarantees. Contractor shall be responsible for rectifying, at Contractor's sole expense, any damage to the Excluded Materials caused by Contractor's or Contractor's Subcontractors actions,

inactions or negligence with respect to the Excluded Materials.

8.2.4. Contractor agrees that it shall prepare and deliver the services in accordance with best industry practices and standards and based upon the best information known to Contractor at the time of preparation. In the event of any Defect, error, or omission in the services for which Contractor is responsible, Contractor shall correct such defect, error, or omission in the services at no additional charge to Owner.

8.2.5. Notwithstanding any other term or provision herein to the contrary, Contractor shall not be responsible for the cost of correcting a breach of Warranty or defect to the extent that the manufacturer of apparatuses, products or equipment hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence.

8.3. Exclusions. The Warranty shall not apply to any repairs, adjustments, alterations, replacements or maintenance that may be required as a result of damage to the System or Site, or failure of any Services, to the extent such damage or failure is caused by:

8.3.1. A Force Majeure Event, but expressly excluding any Contractor claim of differing site conditions; or

8.3.2. Any modifications or enhancement to the System, or alterations, repairs or replacements performed by the Owner or any Owner contractor (other than the Contractor or any of its Subcontractors or Suppliers) made without prior written approval of Contractor and not executed in accordance with this Contract, applicable law or the Standard of Care.

8.4. Successors and Assigns. This Warranty will inure to the benefit of and be binding on the Parties and their respective successors and assigns. Nothing in this Warranty, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Warranty upon any person or entity other than Owner.

9. CANCELLATION AND TERMINATION

9.1. Cancellation for Convenience.

Owner may, at its sole discretion and for its convenience, cancel this Contract or may remove one or more Sites from this Contract, without prejudice or penalty and by providing ninety (90) days' notice to Contractor. In such event Contractor shall be paid a prorated portion of the Fixed Contract Price for the cancelled Contract or removed Site(s), this reflecting the percentage of the Services completed to date in accordance with the Section 2 and the other provisions of this Contract.

9.2. Termination; Default.

Either Party shall have the right to terminate this Contract if the other Party is adjudged bankrupt or insolvent; if the other Party makes a general assignment for the benefit of its creditors, except as otherwise provide herein; if a trustee or receiver should be appointed on account of the other Party's insolvency or for any of its property; if the other Party files a petition to take advantage of any debtors' act or to reorganize under bankruptcy or similar laws; hereinabove; the other Party made any

representation or warranty in this Contract that was false or misleading in any material respect when made; or the other Party commits a material violation of any term, condition, or provision of this Contract, which is not cured within fourteen (14) days of receipt of notice of the material violation.

Owner shall have the right to terminate this Contract if Contractor is reasonably adjudged to be deficient in the performance of its Services under this Contract at any Site, or if Contractor should fail to make prompt payment (except in the event of a bona fide dispute) to its Subcontractors or for labor, material or equipment, or if a lien is placed on Owner’s property as a result of an act or omission of Contractor, then Owner, without prejudice to any other right or remedy and after giving Contractor at least fourteen (14) days’ written notice and opportunity to cure (other than in the case of insolvency), may terminate this Contract. In such event, Contractor shall be paid a prorated portion of the Fixed Contract Price for the terminated Site(s), this reflecting the percentage of the Services completed to date in accordance with the Scope of Work and the other provisions of this Contract.

If Owner fails to pay Contractor any amount properly due under any invoice within sixty (60) days of submission (and there is no bona fide dispute between the Parties as to amounts owed hereunder), then Contractor may, upon ten (10) business days’ notice to Owner, stop performance of all Services hereunder and terminate its obligations under this Contract. Any such stop work or termination shall be without prejudice to any rights, powers or remedies of Contractor under this Contract or otherwise

10. FIXED CONTRACT PRICE

The Fixed Contract Price, by Site, for the Services provided in accordance with Section 2.1, 2.2 and 2.3 herein shall be:

Year (to December 31 st)	[Site 1]	[Site 2]	[Site 3]	[Site 4]	Total Fixed Contract Price
Year 1	\$	\$	\$	\$	\$
Year 2	\$	\$	\$	\$	\$
Year 3	\$	\$	\$	\$	\$
Year 4	\$	\$	\$	\$	\$
Year 5	\$	\$	\$	\$	\$

11. TIME AND MATERIAL RATES

Time and Materials (T&M) Rates for Services covered under Section 2.4 of this Contract in Year 1 (if any) shall be:

- Travel cost \$XXX per trip
- Labor cost (normal working hours) \$XXX per manhour (excluding travel time)
- Labor cost (extended working hours) \$XXX per manhour (excluding travel time)
- Labor cost (Sundays and holidays) \$XXX per manhour (excluding travel time)
- Materials Substantiated cost + 10%

Normal working hours are defined as: [_____]

Extended working hours are defined as: [_____]

The maximum amount by which the Travel and Labor costs listed above shall be escalated annually after Year 1 is:

- Maximum Travel and Labor cost escalator % per year.

12. INVOICES, INSPECTION, AND PAYMENT TERMS

12.1. Invoices for Fixed Contract Price Services.

Contractor shall provide a separate invoice to Owner for each Site that is listed in this Contract. Multiple Sites shall not be aggregated or otherwise listed on a single invoice.

Invoices for the Fixed Contract Price Services for a Site, as described in Sections 2.1, 2.2 and 2.3 herein, shall be submitted in accordance with the following schedule and conditions:

- 25% of the Site's Fixed Contract Price shall be invoiced upon submission to Owner of a Triannual Maintenance Report in accordance with the provisions of Section 2.2.1 herein.
- 15% of the Site's Fixed Contract Price shall be invoiced upon submission to Owner of the Annual Maintenance Report in accordance with the provisions of Section 2.2.2 herein.
- 10% of the Site's Fixed Contract Price shall be invoiced at the end of the calendar year.

12.2. Invoices for Emergency Response and System Repair Services.

Contractor shall provide a separate invoice for each Site that is listed in this Contract. Multiple Sites shall not be aggregated or otherwise listed on a single invoice.

Unless otherwise previously agreed by Owner, Invoices for Emergency Response and System Repair services, provided in accordance with Section 2.4 herein (if any), shall be invoiced only upon satisfactory completion of the agreed Services provided by Contractor under the terms of Section 2.4.

12.3. Right of Inspection, Deficiency, and Withholding of Payments.

Owner reserves the right to inspect the Systems and Sites, at times and frequencies to suit Owner, and without providing prior notification to Contractor or otherwise seeking Contractor's permission, in order to assess the condition of the System and/or the Site and in order to assess Contractor's performance of its Services under this Contract.

In the event that Contractor's performance of its Services is reasonably adjudged by Owner to be deficient for a Site then Owner will notify Contractor of its findings and may withhold payments to Contractor until such deficiency has been corrected by Contractor. In the event that the deficiency is not cured by Contractor then Owner may terminate this Contract in accordance with the provisions of Section 9.2.

12.4. Payment Terms.

Payment terms shall be net thirty (30) days following Owner's receipt of Contractor's invoice, except where payments are withheld by Owner in accordance with Section 12.3 above.

Owner reserves the right to pay Contractor's invoices under this Contract individually, and from

different bank accounts, and by check or wire transfer, such as may be most convenient to Owner or be in accordance with Owner's business operations.

13. LIABILITY

- 13.1. ALL CONTRACTOR'S WARRANTIES FOR THE SERVICES AND THE SYSTEMS ARE EXPRESSLY SET FORTH IN THE ARTICLES HEREIN AND ARE IN LIEU OF ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, IN FACT OR BY LAW.
- 13.2. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, OR ANY AND ALL OTHER LOSSES OR DAMAGES TO THE OTHER PARTY OR ANY THIRD PARTIES EXCEPT IN ALL CASES WITH RESPECT TO A BREACH OF THE CONFIDENTIALITY AND INTELLECTUAL PROPERTY PROVISIONS OF THIS CONTRACT OR OTHERWISE RESULTING FROM A BREACH OF THIS CONTRACT OR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY. EACH PARTY UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE OTHER PARTY WAIVES ALL SUCH LIABILITY, TO THE EXTENT NOT EXPLICITLY EXEMPTED FROM THE PROVISIONS OF THE PRECEDING SENTENCE, AND EACH SUCH PARTY CONSENTS TO THE OTHER PARTY'S WAIVER, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.3. Notwithstanding any other provisions of this Contract, the total liability of either Party and its respective employees, agents, representatives and subcontractors hereunder for breach of contract (including, but not limited to failure to meet warranties and patent infringement) and in tort, whether in connection with performance, nonperformance or otherwise, shall be limited to the Fixed Contract Price, except to the extent such liability results from a breach of the confidentiality or intellectual property provisions of this Contract or otherwise results from the gross negligence or willful misconduct of a Party hereunder. When the liabilities and costs incurred by the liable Party and its employees, agents, representatives and subcontractors (including but not limited to costs incurred in corrective action in an effort to meet warranties or cure any breach and in patent infringement indemnification) equal the Fixed Contract Price, the liable Party's total liability under this Contract shall terminate and the other Party shall have no further recourse against the liable party or its employees, agents, representatives or subcontractors except with respect to the liability or costs resulting from the categories of breach of wrongdoing excluded from the liability cap in the preceding sentence

14. MISCELLANEOUS PROVISIONS

14.1. Amendment, Modification and Waiver.

This Contract may not be amended or modified except by an instrument in writing signed by each of the Parties to this Contract. The failure of either Party to enforce any provisions of this Contract shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

14.2. Assignment

- 14.2.1. Contractor shall not sell, transfer, assign, pledge or cause to be assumed (together, “**Assign**”) this Contract, in whole or in part (whether by contract, operation of law, or as the result of corporate merger, consolidation, divestiture, split up, split off, spin off or similar transaction by which a resulting Person, whether an Affiliate or otherwise, purports to be entitled to the benefits and to performance of the obligations of this Contract), without the prior written consent of Owner, which shall not be unreasonably withheld, delayed or conditioned.
- 14.2.2. Subject to the provisions of Section 14.2.3, Owner shall not, without the prior written consent of Contractor, assign this Contract, in whole or in part; provided, that without the prior consent of Contractor, Owner may assign (a) the Contract to an Affiliate of Owner formed to own and operate the Project, (b) the Contract to any parent, manager, or member of the Owner (b) the Contract through merger, consolidation or sale of all or substantially all of Owner’s stock, interests or assets, or (c) to any member of Owner.
- 14.2.3. Owner has obtained or contemplates obtaining financing for the ownership of all or a portion of the Projects and, notwithstanding any provisions in this Contract to the contrary, may collaterally assign, or assign fully in connection with any lease financing of the Systems (and may, in connection with such assignment, permit the lessor to further assign collaterally), its rights, and/or obligations under this Contract in its entirety for purposes of securing such financing. Contractor hereby consents to any such assignment and hereby acknowledges that upon and following an event of default under any financing documents relating to the System, any of the Financing Sources (as defined below) may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Owner thereafter arising under this Contract. A “**Financing Source**” or “**Financing Sources**” means any and all Persons or successors in interest thereof, directly or indirectly, lending money, extending credit or providing or financing any lease for or in connection with any of the following: (i) the construction, term or permanent financing of the Project or Projects; (ii) working capital or other ordinary business requirements of the Project or Projects (including the maintenance, repair, replacement or improvement of a System); (iii) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) the purchase of the Project or Projects and the related rights from Owner.
- 14.2.4. If the rights and interests of Owner in this Contract shall be assigned as herein provided, and the assuming party shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Contractor arising or accruing hereunder from and after the date of such assumption, Owner shall be released and discharged from the terms and conditions hereof, and each such obligation hereunder, from and after such date, and Contractor shall continue this Contract with the assuming party as if such person had been named as Owner under this Contract. Notwithstanding any such assumption by any of the Financing Sources or a designee thereof, Owner shall not be released and discharged from and shall remain liable for any and all obligations to Contractor arising or accruing hereunder prior to such assumption.
- 14.2.5. Notwithstanding any other provision of this Contract to the contrary, any sale by Owner of its rights in this Contract in any proceedings for the foreclosure of any mortgage or lien held in Owner’s rights or interests hereunder, or the assignment or transfer of this Contract in lieu of foreclosure of any such mortgage or lien, shall be deemed to be a permitted sale, transfer or assignment of this Contract.

14.2.6. The provisions of this Section 14.2 are for the benefit of the Financing Sources as well as the Parties hereto, and shall be enforceable by the Financing Sources as express third-party beneficiaries hereof. Contractor hereby agrees that none of the Financing Sources, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Contract on the part of Owner or shall have any obligation or liability to Contractor with respect to this Contract except to the extent any of them becomes a party hereto pursuant to this Section 14.2.

14.3. Dispute Resolution

Disputes arising under this Agreement shall be resolved through litigation in the state and federal courts located in the state in which the Site associated with the dispute is located (the “**Site’s State**”). The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of the Site’s State and to the jurisdiction of the United States District Court for the District of the Site’s State nearest to the Site for the purpose of any suit, action or other proceeding arising out of or based upon this Contract, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Contract except in the state courts of the Site’s State or the United States District Court for the District of the Site’s State nearest to the Site, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such court.

14.4. Confidentiality

Each Party agrees that it will use Confidential Information (as defined below) of the other Party received by it solely for the purpose of performing its obligations under this Contract and not in any way detrimental to the other Party, its parent companies, subsidiaries or affiliates. Each Party agrees to use the same degree of care it uses with respect to its own proprietary or confidential information to prevent unauthorized use or disclosure of Confidential Information. Except as otherwise provided herein, each Party will keep confidential and not disclose Confidential Information of the other Party. Each Party will cause each of its directors, officers, managers, employees, agents, partners, representatives, Subcontractors, successors and permitted assigns to become familiar with, and abide by, the terms of this section. Notwithstanding the provisions of this section to the contrary, either Party may disclose any Confidential Information if, but only to the extent that, based upon advice of counsel, the Party is required to do so by the disclosure requirements of any applicable law. Before making or permitting any such disclosure, each Party will provide the other Party with prompt notice of any such requirement so that the disclosing Party (with the other Party’s assistance, if requested) may seek a protective order or other appropriate remedy. Notwithstanding the foregoing, each Party may provide any and all information required (i), in the case of disclosures by Contractor, by its Subcontractors, financing parties and insurance agents as are necessary to complete the Services or obtain financing for its activities and (ii), in the case of disclosures by Owner, by its insurance agents or, if applicable, the Financing Sources and their representatives to the extent necessary to obtain financing for the Services, and Owner operational and maintenance parties and their representatives to the extent necessary to operate and maintain the Facility, in each case without the consent of the other Party. In each such case, the disclosing Party will be responsible for any breaches of the confidentiality provisions of this section by any such third party to whom it has disclosed

Confidential Information. “**Confidential Information**” means any and all information and material that relates to the disclosing party's customer accounts, systems, research, development, algorithms, products, software, source codes, trade secrets, procedures or business affairs or that of any of its customers, subsidiaries or affiliates. For the purposes of this Contract, Confidential Information shall also include each party's trade secrets, patents and patentable concepts, processes and devices and other proprietary information. Notwithstanding the foregoing, Confidential Information does not include (i) information generally known to the public or (ii) information already known by the receiving party prior to its disclosure and information independently developed without reference to the Confidential Information.

14.5. Notices

Unless otherwise provided herein, any notice provided for in this Contract shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above or below when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next business day if sent at any other time), on the day after being sent when sent by overnight delivery service, or five (5) United States Postal Service business days after deposit in the mail when sent by U.S. mail.

Unless otherwise provided in this Contract, all notices and communications concerning this Contract shall be in writing and addressed to the other Party as follows:

Contractor:

With an electronic copy to ATTN: [_____]

Any notice to be given to Owner shall be addressed as follows:

Soltage, LLC
66 York St, 5th Floor
Jersey City, New Jersey 07302
Attention: Stephen Goodbody
Telephone: (201) 499-1037
Facsimile: (201) 432-1010

With copies, which copy shall not constitute notice, to:

[Mark A. Barnett, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, Massachusetts 02210]

or at such other addresses as may be designated in writing by the other Party.

14.6. **Governing Law**

This Contract, and the application or interpretation hereof, shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its principles of conflicts of law.

14.7. **Counterparts**

This Contract may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or electronic signatures shall have the same effect as original signatures.

[Signature Page Follows]

Template

IN WITNESS WHEREOF, the undersigned have executed this Contract, effective as of the Commencement Date appearing on the first page of this Contract.

OWNER:

By: _____
Name:
Title:

CONTRACTOR:

By: _____
Name:
Title:

APPENDIX A
FORM OF TRI-ANNUAL MAINTENANCE REPORT

APPENDIX B
FORM OF ANNUAL MAINTENANCE REPORT