



September 12, 2012

In the Matter of the Petition of  
Public Service Electric and Gas Company  
for Approval of an Extension of a  
Solar Generation Investment Program  
and Associated Cost Recovery Mechanism  
and for Changes in the Tariff for Electric Service,  
B.P.U.N.J. No. 15 Electric Pursuant to  
N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1  
("Solar4All Extension Petition")

BPU Docket No. EO12080721

***VIA ELECTRONIC & REGULAR MAIL***

Kristi Izzo, Secretary  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Dear Secretary Izzo:

On behalf of Public Service Electric and Gas Company ("PSE&G"), this letter and the attached materials are in response to the letter to me from Michael Winka dated August 31, 2012 in the above-referenced matter seeking approval of the Solar 4 All Extension Program ("Extension Program" or "Program"), and are intended to remedy any and all deficiencies identified in Mr. Winka's letter. As stated in the Petition in this matter, PSE&G respectfully submits that the Extension Program is substantially similar to PSE&G's original Solar4All Program, and that the Company has committed significant effort and resources to comply with the Board's Minimum Filing Requirements ("MFRs"). PSE&G again requests, as in the Petition, that the Board Staff find this filing to be administratively complete as expeditiously as possible.

1. Section V of the Minimum Filing Requirements ("MFRs")

According to Mr. Winka's letter, "Board Staff believes that this filing is large and complex and therefore the information in Section V is required for this filing." As a preliminary matter, while PSE&G has indicated in Appendix A of its Petition that the information in Section V of the Board's Minimum Filing Requirements ("MFRs") is "not applicable" to this renewable

energy program,<sup>1</sup> any suggestion that the required information regarding the direct and indirect benefits and projected costs resulting from the Program has not been provided was inadvertent.<sup>2</sup> Attached to this letter as Exhibit A is PSE&G's Appendix A (Revised), correcting the initial Appendix and indicating where in the filing PSE&G has provided the relevant benefit and cost information, and those sections of the filing detailing how the Program will support energy and environmental statewide planning objectives. Specifically, the filing includes detailed information regarding the following:

Direct Benefits. PSE&G will flow back to ratepayers all revenues it receives from the sale of energy, capacity, Solar Renewable Energy Certificates ("SRECs"), and Investment Tax Credits ("ITCs") to help offset the Extension Program's costs. Any revenue received from leasing space on parking lot canopies will also flow back to ratepayers. In addition, PSE&G lease payments to the municipalities, counties, and other entities that host Extension Program projects will provide a new revenue stream to help those entities manage their operating budgets.<sup>3</sup> The quantification of the direct benefits are provided in Schedule SS-S4AE-3 contained in Attachment B-Swetz - Sch SS-S4AE-2 to 8.

Indirect Benefits – Employment, Economic Development, and Environmental Benefits of the Extension Program. The filing demonstrates that based on estimates developed by the Rutgers Edward J. Bloustein School of Planning and Public Policy ("Bloustein School") to support the New Jersey Energy Master Plan ("EMP"), the Extension Program will require approximately 885 job-years of direct labor to complete the projects, and another 26 permanent jobs will be created to operate and maintain the solar systems. Based on a separate Bloustein School study, the filing includes PSE&G's estimate that the Extension Program may result in total additional worker income of about \$94 million, and also includes PSE&G's estimate that over its five-year life, the Extension Program may also provide additional State tax revenue of \$7 million, local tax revenue of \$9 million, and would add \$147 million to the State gross product.<sup>4</sup>

The filing also details the environmental benefits of the Program, including PSE&G's estimate that once fully built out, each year the Extension Program operates it will:

- generate enough power to supply approximately 21,500 homes;
- remove the emissions equivalent of 19,700 cars from the road;

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<sup>1</sup> Solar4All Extension Petition, Appendix A ("Appendix A"), at Pages 9-10 of 10.

<sup>2</sup> See Appendix A, Page 1 of 10 (although this filing qualifies as small scale based on the projected rate impacts, "PSE&G is providing the information required in the applicable parts of Section V").

<sup>3</sup> Petition, at ¶¶ 24 (pp. 10-12), 27; Forline Testimony, at 4, 5-6, 16-17.

<sup>4</sup> Forline Testimony, at 10-11.

- displace approximately 103,100 metric tons of CO<sub>2</sub> emissions; and
- reduce the levels of other air pollutants, including over 190 metric tons of NO<sub>x</sub> emissions and 440 metric tons of SO<sub>2</sub> emissions.<sup>5</sup>

Support of Statewide Planning Objectives. Section V of the MFRs also requires that the utility demonstrate how the proposed program will support energy and environmental statewide planning objectives, such as attainment of the Renewable Portfolio Standard (“RPS”) and any emission requirements. Both the Petition and Mr. Forline’s testimony satisfy this requirement, providing details regarding the following:

- The Program’s support of the solar energy goals expressly set forth in the EMP, including the EMP’s recognition that properties that cannot be developed for general commercial or residential purposes, such as brownfields and landfills, or properties that can provide dual benefits from solar power, such as parking lots and warehouse roofs, are well-suited for the development of large, grid-connected solar generation.<sup>6</sup>
- The fact that the Extension Program will work hand in glove with the recently-enacted solar legislation to begin producing significant amounts of Solar Renewable Energy Certificates (“SRECs”) during the same timeframe that, due to the increased RPS under the new law, there is expected to be a demand for those SRECs. In this manner, the Extension Program will provide a foundation during those critical years to ensure that there is a baseline of solar projects that maintains jobs for the solar industry and contributes to the SRECs needed to moderate any future increase in SREC prices.<sup>7</sup>

## 2. Description of the Quality Control Methods to be Used.

PSE&G maintains the quality and safety of Solar 4 All projects by requiring solar developers to design and construct solar facilities in accordance with applicable governing rules and regulations. The designs are signed and submitted by a NJ Licensed Professional Engineer and reviewed, inspected, and approved by the agency or agencies with jurisdiction. Solar facilities are also inspected and commissioned validating that the facility passes a performance test demonstrating that the ratio of each system’s actual output in KWH over the expected output in KWH conforms to the terms and conditions of the construction contract. PSE&G solar facilities that are part of the Solar 4 All Program are inspected by an independent third party to verify that each facility meets design specification, which includes verifying equipment, performance and shading (if applicable), construction techniques, array tilt and azimuth, grounding conductors, and other parameters as dictated by site conditions. When the solar

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<sup>5</sup> Id., at 12-13.

<sup>6</sup> See Petition, at ¶ 16; Forline Testimony, at 6, 8-9.

<sup>7</sup> Petition, at ¶¶ 17-18, 30-33; Forline Testimony, at 7-8.

facility is placed into service, an operations and maintenance program is deployed consisting of routine inspections and equipment maintenance activities, and a 24-hour monitoring system is put in place to report on the status and performance of the facility, alerting operations and maintenance personnel on any urgent issues that may arise. All of these quality control methods currently employed as part of the Solar 4 All Program will continue to be implemented as part of the Extension Program.

3. Criteria Used to Choose the Program.

Section II of the MFRs, item g., requires that the utility provide “the criteria upon which it chose the program.” This item was inadvertently omitted in Appendix A to PSE&G’s Petition, and that omission has been corrected in PSE&G’s Appendix A (Revised), attached hereto as Exhibit A. As indicated in that Exhibit, the criteria used to choose the market segments proposed in the Extension Program have been detailed in PSE&G’s Petition and in the testimony of Mr. Forline.

For example, as noted above and as detailed in the Petition, the EMP emphasized that properties that cannot be developed for general commercial or residential purposes, such as brownfields and landfills, or properties that can provide dual benefits from solar power, such as parking lots and warehouse roofs, are well-suited for the development of large grid-connected solar generation. In developing the Extension Program PSE&G has attempted to assist the State in meeting its land use and renewable policy objectives by directing solar investment toward sectors and geographic areas where there are additional societal benefits from such investment.<sup>8</sup>

The selection of the various Program segments and the need for this Program in the solar market is detailed by Mr. Forline, who notes at the beginning of his testimony that the Program “targets market segments that have been specifically identified in the recently enacted solar legislation . . . along with other market segments that cannot fully benefit from net metering.”<sup>9</sup> Specifically noting the Christie Administration’s opposition to “the use of ratepayer subsidies to turn productive farmland into grid-supply solar facilities,” Mr. Forline details why PSE&G has chosen to focus on brownfields, landfills, and properties that can provide dual benefits from solar power, emphasizing the cost and complexity of such projects, the market and other barriers that have hindered solar development in the segments that PSE&G has chosen to pursue, and

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<sup>8</sup> Petition, at ¶ 16. See also id., at ¶17 (referencing Governor Christie’s statement that the new solar legislation enacted in July 2012 “will help [New Jersey] remain a national leader in the solar energy industry as we continue to promote innovative approaches to solar development, like developing landfills and other unusable lands and transforming them into sources of usable clean energy, all while holding down costs for families and businesses”); ¶ 28 (noting that in the Pilots and Demonstrations segment of the Extension Program PSE&G will consider “proposals that attempt to lower the overall cost of solar power and more fully integrate solar into the distribution grid, or otherwise show a dual benefit to solar power”).

<sup>9</sup> Forline Testimony, at 2-3.

PSE&G's particular attributes indicating its ability to manage these types of projects.<sup>10</sup> As Mr. Forline also points out, putting aside PSE&G's existing Solar 4 All program, the Extension Program is not similar to any current program administered by the Board's Office of Clean Energy.<sup>11</sup>

4. Detailed Breakdown of the Estimated Program Costs.

Estimated program costs on an annual basis, broken down into the following categories, are set forth on Exhibit B, attached hereto: administrative, marketing, program implementation, and other, which specifically includes rent, O&M, real estate taxes, insurance, and removal costs. Training, rebates/incentives and evaluation costs are not included, since these activities are not part of the Extension Program. The costs of inspections and quality control are included in program implementation costs.

5. Draft Contracts/Agreements

You have requested copies of standard contracts or agreements contemplated under the Extension Program. Attached hereto are a draft rooftop lease (Exhibit C); a draft ground lease (Exhibit D); and draft Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project ("EPC Contract", Exhibit E). The two leases and the EPC Contract are in draft form and may be subject to further modification based on, among other things, the facts and circumstances related to each individual project, negotiations with the counterparties, the settlement agreement governing the Program, advice of counsel, changes in law, and other relevant factors.

\* \* \*

Again, in light of the materials previously provided and the information provided herein, PSE&G respectfully requests that the Board Staff find the Solar 4 All Extension Program filing to be administratively complete as expeditiously as possible. If you have any questions, please do not hesitate to contact me.

Very truly yours,



C Attached Service List (E-mail Only)

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<sup>10</sup> Forline Testimony, at 8-10. See also *id.*, at 19, 24 (regarding the need for and PSE&G's experience developing solar projects on landfill and brownfield sites); 20-21, 24 (regarding the need for and reason the Extension Program is particularly suited to development of solar projects on warehouse roofs); 21-22 (regarding, among other things, the market for solar projects on large parking lots, and the recognition of this opportunity under the recently-enacted solar legislation).

<sup>11</sup> *Id.*, at 25.

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# **EXHIBIT A**

APPENDIX A (REVISED)  
Page 1 of 10

<b>IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF A SOLAR4AII EXTENSION PROGRAM AND AN ASSOCIATED COST RECOVERY MECHANISM</b>	
<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER <u>N.J.S.A. 48:3-98.1</u></b>	<b>LOCATION IN FILING</b>
<b>I. General Filing Requirements</b>	
a. The utility shall provide with all filings, information and data pertaining to the specific program proposed, as set forth in applicable sections of <u>N.J.A.C. 14:1-5.11</u> and <u>N.J.A.C. 14:1-5.12</u> .	Information and data pertaining to the specific program proposed, as set forth in the applicable sections of <u>N.J.A.C. 14:1-5.11</u> and <u>N.J.A.C. 14:1-5.12</u> , is included in the schedules to the Testimony of Stephen Swetz (Attachment B to the Petition) and Testimony of Donna M. Powell (Attachment C to the Petition). Other information required by these regulations will be provided in Attachments D, E, F and G
b. All filings shall contain information and financial statements for the proposed program in accordance with the applicable Uniform System of Accounts that is set forth in <u>N.J.A.C. 14:1-5.12</u> . The utility shall provide the Accounts and Account numbers that will be utilized in booking the revenues, costs, expenses and assets pertaining to each proposed program so that they can be properly separated and allocated from other regulated and/or other programs.	Attachment B Schedule SS-S4AE-8 (Program Income Statement and Balance Sheet,) Attachment C (Testimony of Donna M. Powell–Journal Entries) Schedules DMP-S4AE-2 thru Schedule-S4A-6
c. The utility shall provide supporting explanations, assumptions, calculations, and work papers for each proposed program and cost recovery mechanism petition filed under <u>N.J.S.A. 48:3-98.1</u> and for all qualitative and quantitative analyses therein. The utility shall provide electronic copies of all materials and supporting schedules, with all inputs and formulae intact.	PSE&G provides such data in its Petition, Attachment A (Testimony of Joseph A. Forline), Attachment B (Testimony of Stephen Swetz) and their supporting schedules and work papers. PSE&G is providing copies of its Petition, supporting schedules and work papers in both hard copy and electronic format, where applicable.
d. The utility shall file testimony supporting its petition.	Please refer to the testimony filed in support of PSE&G's Petition Attachments A, B, and C
e. For any small scale or pilot program, the utility shall only be subject to the requirements in this Section and Sections II, III, and IV. The utility shall, however, provide its estimate of costs and a list of data it intends	This filing qualifies as a small scale program based upon the projected rate impacts; however, PSE&G is providing the information required in the applicable parts of Section V.

APPENDIX A (REVISED)

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**IN THE MATTER OF THE PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY FOR APPROVAL OF A SOLAR4ALL EXTENSION  
PROGRAM AND AN  
ASSOCIATED COST RECOVERY MECHANISM**

<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
<p>to collect in a subsequent review of the benefits of the program. Information in Section V may be required for pilot and small programs if such programs are particularly large or complex. A “small scale” project is defined as one that would result in either a rate increase of less than a half of one percent of the average residential customer’s bill or an additional annual total revenue requirement of less than \$5 million. A pilot program shall be no longer than three years, but can be extended under appropriate circumstances.</p>	
<p>f. If the utility is filing for an increase in rates, charges etc., or for approval of a program which may increase rates/charges to ratepayers in the future, the utility shall include a draft public notice with the petition and proposed publication dates.</p>	<p>PSE&amp;G will hold three (3) public hearings in its service territory; North, Central and Southern regions; a draft public notice will be provided as Attachment D to the Petition.</p>
<b>II. Program Description</b>	
<p>a. The utility shall provide a detailed description of each proposed program for which the utility seeks approval.</p>	<p>Petition, Attachment A (Testimony of Joseph A. Forline) pp,13-23, and Schedule JAF-S4AE-2 (Program Rules)</p>
<p>b. The utility shall provide a detailed explanation of the differences and similarities between each proposed program and existing and/or prior programs offered by the New Jersey Clean Energy Program, or the utility.</p>	<p>Petition, pp. 3, 9, 15, Attachment A (Testimony of Joseph A. Forline) p. 25</p>
<p>c. The utility shall provide a description of how the proposed program will complement, and impact existing programs being offered by the utility and the New Jersey Clean Energy Program with all supporting documentation.</p>	<p>Petition, pp. 3, 9, 15, Attachment A (Testimony of Joseph A. Forline) p. 25</p>
<p>d. The utility shall provide a detailed description of how the proposed program is consistent with and/or different from other utility programs or pilots in place or proposed with all supporting documentation.</p>	<p>Petition, pp. 3, 9, 15, Attachment A (Testimony of Joseph A. Forline) p. 25</p>

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**IN THE MATTER OF THE PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
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<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
<p>e. The utility shall provide a detailed description of how the proposed program comports with New Jersey State policy as reflected in reports, including the New Jersey Energy Master Plan, or, pending issuance of the final Energy Master Plan, the draft Energy Master Plan, and the greenhouse gas emissions reports to be issued by the New Jersey Department of Environmental Protection pursuant to N.J.S.A. 26:2C-42(b) and (c) and N.J.S.A. 26:2C-43 of the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq.</p>	<p>Petition, pp.8, Attachment A (Testimony of Joseph A. Forline), pp. 2, 6-8</p>
<p>f. The utility shall provide the features and benefits for each proposed program including the following:</p> <ul style="list-style-type: none"> <li>i. the target market and customer eligibility if incentives are to be offered;</li> <li>ii. the program offering and customer incentives;</li> <li>iii. the quality control method including inspection;</li> <li>iv. program administration; and</li> <li>v. program delivery mechanisms.</li> </ul>	<p>Attachment A (Testimony of Joseph A. Forline), Schedule JAF-S4AE-2 (Program Rules)</p>
<p>g. The utility shall provide the criteria upon which it chose the program.</p>	<p>Petition pp. 7-8, Attachment A (Testimony of Joseph A. Forline), pp. 2-3, 8-10, 19-25.</p>
<p>h. The utility shall provide the estimated program costs by the following categories: administrative (all utility costs), marketing/sales, training, rebates/incentives including inspections and quality control, program implementation (all contract costs) and evaluation and other.</p>	<p>Petition p. 3, 11, Attachment B (Testimony of Stephen Swetz), and Schedules SS-S4AE-3 through SS-S4AE-3a, ; Workpaper WP_JAF-S4AE - 1.xl, Attachment A (Testimony of Joseph A. Forline) Schedule JAF-S4AE-2 (Program Rules)</p>
<p>i. The utility shall provide the extent to which the utility intends to utilize employees, contractors or both to deliver the program and, to the extent applicable, the criteria the utility will use for contractor selection.</p>	<p>Petition p. 11</p>

APPENDIX A (REVISED)

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**IN THE MATTER OF THE PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
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<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
j. In the event the program contemplates an agreement between the utility and its contractors and/or the utility and its ratepayers, copies of the proposed standard contract or agreement between the ratepayer and the utility, the contractor and the utility, and/or the contractor and the ratepayer shall be provided.	Not applicable
k. The utility shall provide a detailed description of the process for resolving any customer complaints related to these programs.	Petition, p. 12; Attachment A (Testimony of Joseph A. Forline), pp. 25-26, and Schedule JAF-S4AE-3.
l. The utility shall describe the program goals including number of participants on an annual basis and the energy savings, renewable energy generation and resource savings, both projected annually and over the life of the measures.	Petition, pp. 2 and Attachment A (Testimony of Joseph A. Forline), pp. 6-8
m. Marketing – The utility shall provide the following: a description of where and how the proposed program/project will be marketed or promoted throughout the demographic segments of the utility’s customer base including an explanation of how prices and the service for each proposed program/project will be conveyed to customers.	Attachment A (Testimony of Joseph A. Forline), Schedule S4AE-2 (Program Rules)

APPENDIX A (REVISED)

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**IN THE MATTER OF THE PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY FOR APPROVAL OF A SOLAR4AII EXTENSION  
PROGRAM AND AN  
ASSOCIATED COST RECOVERY MECHANISM**

<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
<b>III. Additional Required Information</b>	
<p>a. The utility shall describe whether the proposed programs will generate incremental activity in the energy efficiency/conservation/renewable energy marketplace and what, if any, impact on competition may be created, including any impact on employment, economic development and the development of new business with all supporting documentation. This shall include a breakdown of the impact on the employment within this marketplace as follows: marketing/sales, training, program implementation, installation, equipment, manufacturing and evaluation and other applicable markets. With respect to the impact on competition the analysis should include the competition between utilities and other entities already currently delivering the service in the market or new markets that may be created.</p>	<p>Petition, Attachment A (Testimony of Joseph A. Forline), Schedule JAF-S4AE2 (Program Rules),</p>
<p>b. The utility shall provide a description of any known market barriers that may impact the program and address the potential impact on such known market barriers for each proposed program with all supporting documentation. This analysis shall include barriers across the various markets including residential (both single and multi-family), commercial and industrial (both privately owned and leased buildings), as well as between small, medium and large commercial and industrial markets. This should include both new development and retrofit or replacement upgrades across the market sectors.</p>	<p>Petition, Attachment A (Testimony of Joseph A. Forline) p. 24 -25, Schedule JAF-S4AE-2 (Program Rules)</p>
<p>c. The utility shall provide a qualitative/quantitative description of any anticipated environmental benefits associated with the proposed program and a quantitative estimate of such benefits for the program overall and for each participant in the program with all supporting</p>	<p>Petition p. 15, Attachment A (Testimony of Joseph A. Forline), p. 9, Schedule JAF-S4AE-2 (Program Rules)</p>

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documentation. This shall include an estimate of the energy saved in kWh and/or therms and the avoided air emissions, wastewater discharges, waste generation and water use or other saved or avoided resources.	
d. To the extent known, the utility shall identify whether there are similar programs available in the existing marketplace and provide supporting documentation if applicable. This shall include those programs that provide other societal benefits to other under-served markets. This should include an analysis of the services already provided in the market place, and the level of competition.	Attachment A (Testimony of (Joseph A. Forline) pp.8-9
e. The utility shall provide an analysis of the benefits or impacts in regard to Smart Growth.	Not applicable
f. The utility shall propose the method for treatment of Renewable Energy Certificates (“REC”) including solar RECs or any other certificate developed by the Board of Public Utilities, including Greenhouse Gas Emissions Portfolio and Energy Efficiency Portfolio Standards including ownership, and use of the certificate revenue stream(s).	Petition, Attachment A (Testimony of Joseph A. Forline), Attachment B (Testimony of Stephen Swetz)
g. The utility shall propose the method for treatment of any air emission credits and offsets, including Regional Greenhouse Gas Initiative carbon dioxide allowances and offsets including ownership, and use of the certificate revenue stream(s).	Petition, Attachment A (Testimony of Joseph A. Forline), Schedule JAF-S4AE-2 (Program Rules), Attachment B (Testimony of Stephen Swetz)
h. The utility shall analyze the proposed quantity and expected prices for any REC, solar REC, air emission credits, offsets or allowances or other certificates to the extent possible.	Petition, Attachment A (Testimony of Joseph A. Forline), Schedule JAF-S4AE-2 (Program Rules), Attachment B (Testimony of Stephen Swetz)
<b>IV. Cost Recovery Mechanism</b>	
a. The utility shall provide appropriate financial data for the proposed program, including estimated revenues, expenses and capitalized	PSE&G provides appropriate financial data for the proposed program in Attachment B (Testimony and Schedules of

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<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
<p>investments, for each of the first three years of operations and at the beginning and end of each year of said three-year period. The utility shall include pro forma income statements for the proposed program, for each of the first three years of operations and actual or estimated balance sheets as at the beginning and end of each years of said three year period.</p>	<p>Stephen Swetz), Attachment C (Testimony and Schedules of Donna M. Powell).</p>
<p>b. The utility shall provide detailed spreadsheets of the accounting treatment of the cost recovery including describing how costs will be amortized, which accounts will be debited or credited each month, and how the costs will flow through the proposed method of recovery of program costs.</p>	<p>Attachment B (Swetz testimony), Schedules SS-S4AE-2 – SS-S4AE-4; and Attachment C (Testimony of Donna M. Powell).</p>
<p>c. The utility shall provide a detailed explanation, with all supporting documentation, of the recovery mechanism it proposes to utilize for cost recovery of the proposed program, including proposed recovery through the Societal Benefits Charge, a separate clause established for these programs, base rate revenue requirements, government funding reimbursement, retail margin, and/or other.</p>	<p>Attachment B (Testimony and Schedules of Stephen Swetz).</p>
<p>d. The utility’s petition for approval, including proposed tariff sheets and other required information, shall be verified as to its accuracy and shall be accompanied by a certification of service demonstrating that the petition was served on the Department of the Public Advocate, Division of Rate Counsel simultaneous to its submission to the Board.</p>	<p>PSE&amp;G’s Petition is verified as to its accuracy, and PSE&amp;G will serve a copy of the filing on the Department of Public Advocate, Division of Rate Counsel; Attachment G (Tariff Sheets)</p>
<p>e. The utility shall provide an annual rate impact summary by year for the proposed program, and an annual cumulative rate impact summary for all approved and proposed programs showing the impact of individual programs as well as the cumulative impact of all programs upon each customer class of implementing each program and all approved and proposed programs based upon a revenue requirement analysis that</p>	<p>Attachment B (Testimony and Schedules of Stephen Swetz); and Attachments F, and G to the Petition</p>

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<p>identifies all estimated program costs and revenues for each proposed program on an annual basis. The utility shall also provide an annual bill impact summary by year for each program, and an annual cumulative bill impact summary by year for all approved and proposed programs showing bill impacts on a typical customer for each class.</p>	
<p>f. The utility shall provide, with supporting documentation, a detailed breakdown of the total costs for the proposed program, identified by cost segment (capitalized costs, operating expense, administrative expense, etc.). This shall also include a detailed analysis and breakdown and separation of the embedded and incremental costs that will be incurred to provide the services under the proposed program with all supporting documentation.</p>	<p>Petition, Attachment A (Testimony of Joseph A. Forline), WP-JAF-S4AE-1, Schedule JAF-S4AE-2 (Program Rules), Schedules SS-S4AE-3 to SS-S4AE-3a</p>
<p>g. The utility shall provide a detailed revenue requirement analysis that clearly identifies all estimated program costs and revenues for the proposed program on an annual basis, including effects upon rate base and pro forma income calculations.</p>	<p>Attachment B (Testimony of Stephen Swetz), Schedules SS-S4AE-2 to SS-S4AE-8 and workpapers.</p>
<p>h. The utility shall provide, with supporting documentation: (i) a calculation of its current capital structure as well as its calculation of the capital structure approved by the Board in its most recent electric and/or gas base rate cases, and (ii) a statement as to its allowed overall rate of return approved by the Board in its most recent electric and/or gas base rate cases.</p>	<p>Attachment B (Testimony and Schedules of Stephen Swetz).</p>
<p>i. If the utility is seeking carrying costs for a proposed program, the filing shall include a description of the methodology, capital structure, and capital cost rates used by the utility.</p>	<p>Attachment B (Testimony and Schedules of Stephen Swetz).</p>
<p>j. A utility seeking incentives or rate mechanism that decouples utility revenues from sales, shall provide all supporting justification, and rationale for incentives, along with supporting documentation,</p>	<p>Not applicable.</p>

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<b>MIMIMUM FILING REQUIREMENTS FOR PETITIONS UNDER N.J.S.A. 48:3-98.1</b>	<b>LOCATION IN FILING</b>
assumptions and calculations.	
<b><u>V. Cost/Benefit Analysis</u></b>	
a. The utility shall provide a detailed analysis with supporting documentation of the net benefits associated with the proposed program, including, if appropriate, a comprehensive and detailed avoided cost savings study with supporting documentation. The value of the avoided environmental impacts and the environmental benefits and the value of any avoided or deferred energy infrastructure should be stated separately.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. below.
b. The utility shall calculate a cost/benefit analysis utilizing the Total Resource Cost ("TRC") test that assesses all program costs and benefits from a societal perspective. The utility may also provide any cost benefit analysis that it believes appropriate with supporting rationales and documentation.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. below.
c. The utility shall quantify all direct and indirect benefits as well as provide projected costs resulting from a proposed program that is subject to a cost/benefit test.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. below.
d. Renewable energy programs shall not be subject to a cost/benefit test but the utility must quantify all direct and indirect benefits resulting from such a proposed program as well as provide the projected costs. The utility must also demonstrate how such a proposed program will support energy and environmental statewide planning objectives, such as attainment of the Renewable Portfolio Standard and any emission requirements.	Direct benefits are indicated in the Petition, at ¶¶ 24, 27, and in Attachment A (direct testimony of Joseph A. Forline) on pages 4-6, 16-17. The quantification of the direct benefits are provided in Schedule SS-S4AE-3 contained in Attachment B-Swetz - Sch SS-S4AE-2 to 8. Indirect benefits, including the employment and environmental impacts of the Program, are discussed in Mr. Forline's testimony at pages 10-13. Demonstration of the program's support of energy and environmental statewide planning objectives, including support of the statewide Energy Master Plan and attainment of the Renewable Portfolio Standards

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	set forth in the recently enacted solar legislation, is set forth in the Petition, at ¶¶ 16-18, 30-33, and in Mr. Forline’s Testimony, at 6-10.
e. The utility must demonstrate for the proposed program that it results in a positive benefit/cost ratio, or, if the utility cannot make such a demonstration, it must provide the rationale for why the proposed program should be approved.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. above.
f. The level of energy and capacity savings utilized in these calculations shall be based upon the most recent protocols approved by the Board of Public Utilities to measure energy savings for the New Jersey Clean Energy Program. In the event no such protocols exist, or to the extent that a protocol does not exist for a filed program, the utility must submit a measurement protocol for the program or contemplated measure for approval by the Board.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. above.
g. The utility shall also quantify and deduct from the energy and capacity savings any free rider effects and the business as usual benefits from homeowners and businesses installing Energy Efficiency or Renewable Energy without the N.J.S.A. 48:3-98.1 benefits or incentives.	Not applicable. This is a renewable energy program not subject to a cost/benefit test. Please see item d. above.

# **EXHIBIT B**

**Part II Program Description Section h**

	Administrative	Marketing	Program Implementation	Other				
				Rent	O & M	RE Taxes	Insurance	Removal Costs
2013	1,321,704	150,000	41,438,450	-	-	-	16,201	-
2014	1,823,951	206,000	112,108,991	592,635	430,171	-	200,706	-
2015	1,887,789	141,453	229,262,788	1,767,733	1,260,396	627,699	632,442	-
2016	1,953,862	-	225,555,199	4,538,564	3,283,172	775,836	1,301,450	-
2017	2,209,927	-	80,798,088	8,029,231	5,902,038	799,111	1,795,580	-
2018	2,287,275	-	-	8,823,029	6,456,344	823,085	1,898,914	-
2019	2,367,329	-	-	9,043,605	6,616,860	847,777	1,955,881	-
2020	2,450,186	-	-	9,269,695	6,781,367	873,210	2,014,557	-
2021	2,535,942	-	-	9,501,438	6,949,964	899,407	2,074,994	-
2022	2,624,700	-	-	9,738,974	7,122,752	926,389	2,137,244	-
2023	2,716,565	-	3,221,851	9,982,448	7,299,837	954,181	2,201,361	-
2024	2,811,645	-	7,885,427	10,232,009	7,481,324	982,806	2,267,402	-
2025	2,910,052	-	18,612,510	10,487,809	7,667,323	1,012,290	2,335,424	-
2026	3,011,904	-	17,905,244	10,750,005	7,857,946	1,042,659	2,405,487	-
2027	3,117,321	-	7,187,221	11,018,755	8,053,309	1,073,939	2,477,651	-
2028	3,226,427	-	-	11,294,224	8,253,528	1,106,157	2,551,981	-
2029	3,339,352	-	-	11,576,579	8,162,291	1,139,342	2,637,821	-
2030	3,456,229	-	-	11,865,994	6,114,612	1,173,522	2,764,752	-
2031	3,577,197	-	-	12,162,644	6,266,632	1,208,727	2,847,695	-
2032	3,702,399	-	-	12,466,710	6,422,431	1,244,989	2,933,126	-
2033	3,831,983	-	-	10,831,288	6,582,105	1,282,339	3,021,119	839,337
2034	3,966,102	-	-	10,158,496	6,141,971	1,320,809	3,111,753	2,313,402
2035	4,104,916	-	-	7,609,125	5,039,387	1,360,433	3,207,972	5,400,418
2036	4,248,588	-	-	3,372,267	1,943,514	1,401,246	3,336,690	5,396,896

# **EXHIBIT C**

## ROOFTOP LEASE AGREEMENT

THIS **ROOFTOP LEASE AGREEMENT** (this “Agreement” or “Lease”) is made and entered into effective as of \_\_\_\_\_, 201\_\_ (“Effective Date”) by and between \_\_\_\_\_, a New Jersey corporation (“Lessor”) and **Public Service Electric and Gas Company**, a New Jersey corporation (“PSE&G” or “Lessee”). Lessor and PSE&G are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

### RECITALS

A. PSE&G develops, finances, constructs, installs, owns, operates and maintains solar electric generating facilities.

B. Lessor is the owner of that certain building (the “Building”) located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, New Jersey (the “Land”) as described more fully in Exhibit A.

C. Lessor has entered into discussions with \_\_\_\_\_ (“Contractor”) who has developed a plan to build a solar electric generating facility on the Building.

D. Lessor agrees to grant a Lease to PSE&G to occupy and use the Building and adjacent real property for the purpose of siting a solar electric generating facility on the terms and conditions below.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### LEASE

1. **Premises.** Lessor leases to PSE&G, and PSE&G leases from Lessor, such space on the Building and the adjacent grounds (collectively, the “Premises”) as shall be necessary or convenient for the construction, installation, operation and maintenance of the Solar Facility (as defined below) and the interconnection of the solar facility to the delivery point. The Premises includes (a) a portion of the surface of the roof of the Building (the “Rooftop Space”) necessary to install and site the Solar Facility, (b) space on the exterior and interior of each Building as may be necessary or related to the installation and siting of the Solar Facility (the “Building Space”), and (c) sufficient exterior ground space (the “Ground Space”) as may be necessary for temporary use as construction lay-down and storage area and the permanent installation of associated ground mounted equipment (including invertors, transformers, conduit and related equipment) necessary to interconnect the Solar Facility with the local electric distribution system (the “Delivery Point”). The Rooftop Space, Building Space, Ground Space and the Delivery Point are shown on the site plan attached hereto as Exhibit C. In addition, the Lessor agrees to provide an easement, coterminous with the Term (as defined below), to allow the local utility provider to install such utilities on, over and or under the Premises and through each Building as necessary for PSE&G to operate and interconnect the Solar Facility in a location to be mutually agreed upon by the local utility, PSE&G and the Lessor.

2. Solar Facility. The solar facility includes: the solar panels, mounting systems, inverters, transformers, integrators, all electrical lines and conduits required to collect and transmit electrical energy to the Delivery Point and such additional utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances (collectively, the “Solar Facility”) as described more fully in Exhibit B.

3. Delivery of Premises. Lessor shall deliver the Premises to PSE&G on the Effective Date in a condition which is clean and free of debris. Lessor represents and warrants to PSE&G that, as of the Effective Date:

a. the existing structure of the Building (including the roof, foundations and exterior walls), the common areas and all Building systems (including the plumbing, electrical and fire sprinkler and other fire suppression systems) are in good operating condition and in compliance with all Laws;

b. the Building and Ground Space are free of Hazardous Materials (as defined below);

c. there are no claims by any governmental agency alleging a violation of applicable building codes, regulations, or ordinances exists with regard to the Building, or any part thereof, as of the Effective Date,

d. the existing roof carries a warranty scheduled to expire on \_\_\_\_\_ and has an expected remaining life of at least twenty (20) years, and

e. Lessor has met with the Contractor to review the proposed Solar Facility and has independently confirmed the Solar Facility is consistent with, and will not adversely impact, the existing roof and roof warranty.

4. Term; Rent. The initial term of this Agreement (the “Term”) shall be twenty (20) years from the COD (as defined in Exhibit D). Rent shall be calculated and paid in accordance with Exhibit D. Provided PSE&G is not in default hereunder beyond applicable notice and cure periods as of the scheduled expiration of the Term, PSE&G shall have an option to extend the Term for an additional ten (10) years at a monthly rental equal to the then current fair market rate for like solar leases.

5. Use and Access.

a. PSE&G shall use the Premises for the purpose of the installation, construction, operation, interconnection, maintenance, repair, improvement, replacement and removal of the Solar Facility and uses incidental thereto (collectively, the “Permitted Use”).

b. At all times during the Term, PSE&G shall have the exclusive and continuous right to unobstructed direct sunlight for operation of the Solar Facility. Lessor reserves the right to use the portion of the roof of the Building not included in the Premises for any purpose, or grant easements or subleases in favor of third persons for the installation or operation of telecommunications equipment, satellite dishes, antennae, building

service equipment or other improvements (collectively, “Other Uses”), so long as such Other Uses do not cast shadows, block or restrict access to direct sunlight or otherwise interfere with any of PSE&G’s rights under this Agreement or have a material adverse effect on or result in a material interference with PSE&G’s business or operations or the amount of electricity generated by or the efficiency of the Solar Facility. Any such use, sublease or easement entered into after the Effective Date of this Agreement shall expressly provide that they are subject and subordinate in all respects to this Agreement and to the rights of PSE&G hereunder. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 5, and therefore PSE&G shall have the right to equitable remedies, including the remedies of injunctive relief and specific performance to enjoin any use of the roof of the Building that has a material adverse effect on or results in a material interference with PSE&G’s business or operations or the amount of electricity generated by or the efficiency of the Solar Facility.

c. PSE&G shall have the non-exclusive right of ingress and egress from a public right of way seven (7) days a week, twenty-four (24) hours a day, over the Premises and in and through each Building for the purpose of construction, installation, operation, interconnection, inspection, maintenance, repair and improvements of the Solar Facility.

6. Installation and Ownership of Solar Facility.

a. PSE&G shall have the right to install the Solar Facility on the Premises and within the Building in the approximate initial locations described in the attached Exhibit C and to make such other installations on the Premises as may be reasonably necessary or desirable in connection with the Permitted Use. PSE&G shall have the right at any time and from time to time to repair, replace, remove, improve, enhance, relocate or replace the Solar Facility or any portion thereof with new or different equipment with the same or different specifications so long as the installation of such Solar Facility is otherwise in compliance with this Agreement and all applicable Laws and is within the Premises.

b. Lessor shall have no ownership or other interest in the Solar Facility or other equipment or personal property of PSE&G installed on the Premises. PSE&G may remove all or any portion of the Solar Facility at any time and from time to time. Without limiting the generality of the foregoing, Lessor hereby waives any statutory or common law lien or claim that it might otherwise have in or to the Solar Facility or any portion thereof.

7. Approvals. It is understood and agreed that this Lease and the ability of PSE&G to use the Premises for the Solar Facility is expressly contingent upon PSE&G obtaining and maintaining all certificates, permits, licenses, and other approvals (collectively the “Governmental Approvals”) that may be required by any federal, state, local or regulatory authority (collectively, the “Governmental Authorities”), including the New Jersey Board of Public Utilities, and PSE&G’s approval of a building structural analysis, to be provided by Lessor upon completion of the design of the Solar Facilities, confirming the Building will support the Permitted Use (“Engineering Review”). Lessor, at its own cost and expense, shall (i) cooperate with PSE&G’s effort to obtain and maintain such Governmental Approvals and

Engineering Review and (ii) shall take no action which would likely have a material adverse effect on the status of the Premises with respect to the Permitted Use or PSE&G's ability to obtain and maintain such Governmental Approvals and Engineering Review. PSE&G shall have the right to terminate this Agreement if (a) any application for a Governmental Approval is finally rejected, (b) any Governmental Approval issued to PSE&G contains an unreasonable term or condition or is canceled, expires, lapses, or is otherwise withdrawn or terminated, or is amended or modified in any manner that has an adverse impact on PSE&G, (c) PSE&G reasonably determines that such Governmental Approvals may not be obtained in a timely manner, (d) PSE&G reasonably determines that any Engineering Review is unsatisfactory, (e) PSE&G reasonably determines that the Premises is no longer technically compatible for its use, or (f) PSE&G determines that it will be unable to use the Premises for the Permitted Use. PSE&G shall deliver a notice of termination to Lessor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by PSE&G, or upon such later date as designated by PSE&G in such notice. Upon such termination, this Agreement shall be of no further force or effect and all rights, duties and obligations of Lessor and PSE&G under this Agreement shall terminate.

8. Maintenance, Security.

a. During the Term, PSE&G will maintain the Solar Facility in good working condition. PSE&G shall have no obligation to maintain the condition of the Building or the Premises except that PSE&G shall be responsible at its own expense for the repair of damages caused to the Premises or the Building caused by PSE&G or its contractors.

b. During the Term, Lessor shall maintain, in good operating condition and repair, the Building and the Premises, including structural elements of the Building and the Premises, and all Building systems (including the foundations, exterior walls, structural condition of interior bearing walls, roof, fire sprinkler and or standpipe and hose or other automatic fire extinguishing system, fire hydrants and utility systems). Lessor shall perform, at its sole expense, all repairs reasonably necessary to maintain the Premises in a tenantable condition. If any such repair would interfere with the operations of the Solar Facility, same shall be performed during the months of October through April (except in case of emergency) and Lessor shall use its best efforts to minimize interference with the operation of the Solar Facility. Lessor shall complete any maintenance or repairs required under this Section 8 within thirty (30) days, or such shorter period as may be required by any Governmental Authority, unless the defect constitutes an emergency, in which case Lessor shall cure the defect as quickly as possible, but not later than five (5) days after notice thereof. If Lessor fails to make such repairs, PSE&G may do so, and the cost thereof shall be payable by Lessor to PSE&G on demand, or, if not paid within ten (10) days after invoicing, PSE&G may deduct such amounts from any sums PSE&G may owe Lessor under this Agreement. In the event of an emergency, PSE&G, at its option, may make such repairs at Lessor's expense, before giving any written notice, but PSE&G shall notify Lessor in writing not later than three (3) business days following such emergency.

c. Lessor shall bear all costs and expenses incurred by PSE&G in connection with the temporary or permanent removal of any portion of the Solar Facility as may become

necessary to enable Lessor to fulfill its obligations under Section 8.b, including Lost Energy Damages. During any period in which any portion of the Solar Facility is so removed, Rent shall be abated in proportion to the percentage reduction in the amount of electricity generated by the Solar Facility. For purposes hereof, "Lost Energy Damages" shall include the actual value of lost energy, capacity and solar renewable energy certificates for the duration of a temporary removal or cessation of operations of the Solar Facility. If the Solar Facility is not fully restored within six (6) months, Lessor shall be deemed to be in default hereunder and PSE&G shall be entitled to its remedies under Section 13.

d. If Lessor, its employee, agent or contractor or any other party permitted on the Building roof by Lessor damages the Solar Facility, the Lessor shall immediately notify PSE&G of same. PSE&G shall have the right to make all repairs to Solar Facility or related facilities at the sole cost and expense of Lessor, and Lessor shall reimburse PSE&G for Lost Energy Damages resulting from such damage. Such costs will either be paid directly by Lessor to PSE&G on demand, or, if not paid within ten (10) days after invoicing, PSE&G may deduct such amounts from any sums PSE&G may owe Lessor under this Agreement.

e. As Lessor has care, custody and control of the Building and the Ground Space, Lessor shall take all reasonable precautions and measures to secure the Solar Facility and all equipment, tools and materials related thereto, from vandalism, damage or theft and shall be responsible for any resulting damages arising therefrom.

## 9. Insurance.

a. Lessor and PSE&G shall obtain and maintain during the Term insurance programs in accordance with Exhibit E. On the Effective Date, and not less than annually thereafter, Lessor will provide certificates of insurance evidencing compliance with Exhibit E.

b. Anything in this Agreement to the contrary notwithstanding, PSE&G and Lessor hereby release each other of liability and responsibility, and each hereby waives any claim against the other for any loss or damage that may occur to the Premises, the Building, the Land or any improvements thereto or any personal property located thereon, arising from any cause that (i) would be insured against under the terms of any property insurance required to be carried hereunder, or (ii) is insured against under the terms of any property insurance actually carried by Lessor or carried by or self-insured by PSE&G, regardless of whether it is required hereunder. Such waiver shall not serve to release either Party of its maintenance and other responsibilities under this Agreement.

c. Lessor hereby agrees to give notice to its insurance companies that Lessor has agreed to a waiver of transfer of rights of recovery against others and shall cause its insurance policies to provide that the insurance companies will not enforce their right of recovery against PSE&G. Lessor shall cause its insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such mutual waiver.

10. Removal at End of Term. At the end of the Term, PSE&G shall have the option to (a) at its sole cost and expense, remove from the Premises the Solar Facility and other personal property owned by PSE&G (other than any electrical utility lines, which PSE&G shall have the right to abandon in place), (b) sell the Solar Facility to the Lessor at a cost to be mutually agreed-upon or (c) sell the Solar Facility to a third party, in which case Lessor shall enter into a new Lease agreement with such third party purchaser on terms and conditions not inconsistent with this Agreement. Lessor agrees and acknowledges that the Solar Facility and all of PSE&G's equipment, conduits, fixtures and personal property of PSE&G is and shall remain the personal property of PSE&G and PSE&G shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws.

11. Quiet Enjoyment. Lessor covenants that PSE&G shall peaceably and quietly have, hold and enjoy access to and the benefits of the Premises during the Term for the Permitted Use and Lessor shall protect and defend the right, title and interest of PSE&G hereunder from any other right, interest, title and claim arising through Lessor or any other third person or entity. Nothing in this Agreement shall preclude Lessor from allowing a subsequent use of the balance of the Building, provided any such use does not interfere with PSE&G's operations.

12. Default.

a. In the event of any breach by PSE&G of any of its covenants or obligations under this Agreement, Lessor shall give PSE&G written notice of such breach, After receipt of such written notice, PSE&G shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach hereunder, provided PSE&G shall have such extended period as may be reasonably required beyond the thirty (30) day if the nature of the cure is such that it reasonably requires more than thirty (30) days and PSE&G commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.

b. In the event of any breach by Lessor of any of its representations, warranties, covenants or obligations under this Agreement PSE&G shall give Lessor written notice of such breach. After receipt of such written notice, Lessor shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach hereunder, provided Lessor shall have such extended period as may be reasonably required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Lessor commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. STD: Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if Lessor fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation materially interferes with the Permitted Use.

13. Remedies. Upon a default that is not cured within the permitted time under Section 12, the non-defaulting Party may at its option (but without obligation to do so), declare an event of default and (a) terminate this Agreement and seek all available remedies, or (b) perform the defaulting Party's duty or obligation on the defaulting Party's behalf. If PSE&G is the non-

defaulting party, its damages shall include the cost of removing the Solar Facility and Lost Energy Damages. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting party upon invoice therefor.

14. Casualty.

a. If at any time during the Term of this Agreement, (i) the Rooftop Space is damaged by fire or other casualty such that the amount of electricity generated by the Solar Facility is reduced by twenty-five percent (25%) or more and such damage cannot, in the reasonable written estimate of Lessor's architect or general contractor (to be provided to PSE&G within fifteen (15) days after such casualty) be repaired within thirty (30) days of such occurrence or (ii) any portion of the Building Space or Ground Space is damaged by fire or other casualty and replacement space reasonably acceptable to PSE&G is not made available by Lessor within fifteen (15) days of such casualty, then PSE&G may terminate this Agreement by written notice to Lessor.

b. If at any time during the Term of this Agreement, the Building is damaged by fire or other casualty such that Lessor determines to demolish the Building entirely, then Lessor may terminate this Agreement by written notice to PSE&G.

c. If neither party terminates this Agreement as aforesaid within thirty (30) days after the occurrence of such casualty, then Lessor shall, at its sole cost, promptly commence to repair the Premises and Building to the condition existing prior to such casualty; and upon the completion of such repairs, PSE&G shall repair or replace its Solar Facility at its sole cost. Lessor's and PSE&G's repairs shall be performed in a diligent manner, subject to reasonable delays for insurance adjustment and force majeure. Rent shall be abated in proportion to the damaged area until such repairs and replacements are complete.

15. Condemnation.

a. If, at any time during the Term of this Agreement, title to all or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or transferred in lieu thereof (collectively, "condemned"), the Lessor shall seek an agreement with the condemning party that this Lease shall remain in full force and effect and that the condemning party shall assume all obligations of the Lessor hereunder. If such an agreement can be reached, PSE&G shall have no rights to participate in the condemnation award.

b. If an agreement to maintain this Agreement cannot be reached with the condemning party, this Agreement shall immediately terminate and: (i) PSE&G shall be awarded its proportionate share of the condemnation award, including reasonable attorneys fees associated with the condemnation, based upon the valuation of the Premises and the proportion of the amount of PSE&G's interest in the Premises and Solar Facility bears to entire property, and (ii) in the event of a partial condemnation that requires the relocation of any of the Solar Facility or the facilities associated therewith, (A) PSE&G shall be reimbursed the full cost of any relocation necessary to operate the

Solar Facility in the same manner as it operated prior to the condemnation or (B) PSE&G may terminate this Lease if in its reasonable opinion the Solar Facility cannot operate in the same manner as before such condemnation.

16. Applicable Laws. During the Term, Lessor shall comply with and maintain the Premises and Building in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes (including any required modifications to the Building necessitated by the installation or operation of the Solar Facility), and the requirements of any applicable fire insurance underwriter or rating bureau, now or hereafter in effect (including the Americans with Disabilities Act and laws regulating Hazardous Materials as hereinafter defined) (collectively "Laws"). PSE&G shall, at PSE&G's sole cost and expense, comply with all Laws relating solely to PSE&G's operation of the Solar Facility (including all Laws relating to Hazardous Materials). Lessor shall comply with all Laws relating to the Building in general, without regard to specific use (including modifications required to enable PSE&G to obtain all necessary permits and other Governmental Approvals).

17. Lessor's Representations. In order to induce PSE&G to enter into this Agreement, Lessor covenants, represents and warrants, as of the Effective Date and throughout the Term, as follows:

a. Lessor is solvent and is the sole and exclusive owner of the Premises and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage affecting the Premises.

b. Lessor has obtained the consent of all third parties required to permit it to enter into this Agreement, including the consent and approval of any mortgage holder and the current tenant(s) of the Building, if necessary.

c. Lessor has received no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Building or any part thereof in lieu of condemnation.

d. During the six (6) month period preceding the Effective Date, Lessor has not performed and has not caused to be performed any work on the Premises or the Building that could give rise to any mechanic's or materialmen's liens. There are no unrecorded easements or agreements affecting the Premises that might prevent or adversely affect the use or occupancy of the Premises by PSE&G for operation of the Solar Facility.

e. The Building and the Premises, including structural elements of the Building and the Premises, and all Building systems (including the foundations, exterior walls, structural condition of interior bearing walls, roof, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, fire hydrants and utility systems) are in good operating condition and repair, sufficient and fit for the Permitted Use during the Term.

18. Subordination. This Agreement shall be conditioned upon Lessor's delivering to PSE&G within thirty (30) days of the date hereof a subordination agreement with regard to any existing

mortgages in the form attached hereto as Exhibit F or in such other form and substance reasonably satisfactory to PSE&G (“Subordination Agreement”). Lessor shall use its best efforts to obtain a Subordination Agreement from any subsequent mortgagee prior to placing any new mortgage on the Premises after the Effective Date, but, in any case, Lessor shall fully disclose the terms of this Agreement to such prospective mortgagee and this Agreement shall be and remain a superior encumbrance on the Building unless a Subordination Agreement is fully executed.

19. Environmental.

a. **“Hazardous Materials”** means any hazardous or toxic substance, material or waste, the storage, use, or disposition of which is or becomes regulated by any local governmental authority, the State of New Jersey or the United States government, and includes asbestos and asbestos-containing materials and any material or hazardous waste (i) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (ii) defined as “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6907 et seq. (42 U.S.C. § 6903), (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and (iv) listed or defined as “hazardous waste,” “hazardous substance,” or other similar designation by any regulatory scheme of the State of New Jersey or the United States Government. Lessor and PSE&G shall not cause or permit any Hazardous Material to be brought upon, kept, stored, generated or recycled in or about the Building or Land, excepting PSE&G’s right to store and use Hazardous Materials contained within or related to the construction and operation of the Solar Facility in compliance with applicable Laws. Subject to work safety rules, PSE&G shall grant reasonable access to Lessor’s safety inspection representative within the Premises to verify PSE&G’s compliance.

b. Lessor represents that there are no Hazardous Materials in or on the Premises, Building or Land.

c. Lessor shall defend, indemnify, hold harmless PSE&G and its officers, directors, shareholders, employees, successors, assigns and agents from and against any and all causes of action, claims, judgments, damages, penalties, fines, costs (including those associated with any investigation, removal, cleanup, government oversight and restoration work and materials required to return the Premises and/or the underlying or surrounding property to its condition existing prior to any contamination of the Premises and/or the underlying or surrounding property), liability and losses (including attorney’s fees, consultant fees, and expert fees) arising out of, resulting from, or in connection with (i) any existing Hazardous Materials or contamination in, on or under the Premises, (ii) the release thereof during the construction, operation and maintenance of the Solar Facility, or (iii) the generation, use, storage, management, recycling, or disposal of Hazardous Materials in or about the Premises or Building by the Lessor, its tenants, agents, contractors, employees or invitees prior to or during the term of this Agreement. If Lessor has a duty to defend PSE&G under this Section 19.c, PSE&G may, at its

election, participate with Lessor in discussions and negotiations with other parties concerning the matters affecting the Premises that activated such duty.

d. This Section 19 shall survive expiration or termination of this Agreement.

20. Recording. Lessor agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which PSE&G may record with the appropriate recording officer. The date set forth in the Memorandum of Agreement is for recording purposes only.

21. Assignment. So long as PSE&G is not then in default under this Agreement, PSE&G shall be permitted to assign this Agreement without the consent of the Lessor. Lessor shall be permitted to assign this Agreement to any subsequent purchaser of the Building and Land or any current or subsequent mortgagee requiring a customary assignment of all rents and leases without the consent of PSE&G. Notwithstanding the foregoing provisions of this Section, neither party shall be permitted to assign or transfer its interest herein to any party that is, or of which any partners, officers, directors, members or shareholders are, (a) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury, pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and all applicable provisions of Title III of the USA PATRIOT Act, Public Law No. 107-56 (October 26, 2001); (b) listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (c) listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (d) listed on any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; or (e) listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by any governmental authority. Any purported assignment of this Agreement inconsistent with this Section shall be void ab initio.

22. Third-Party Beneficiary. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge Contractor is intended to be and shall be deemed a third-party beneficiary of this Agreement.

23. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey, without giving effect to principles of conflicts of laws.

24. Miscellaneous. The words "include" and "including" are not words of limitation and shall be deemed to be followed by the words "but not limited to." This Agreement constitutes the full, complete and only agreement between the Parties and supersedes any course of performance, course of dealings, usage of trade, previous agreements, representations, understandings, either oral or written between the Parties and their affiliates. No terms, conditions, agreements, representations, understandings, course of performance, course of dealing, or usage of trade purporting to modify, vary, supplement, explain, or amend any provision of this Agreement shall be effective unless in writing executed by the Parties. If any part of this Agreement is determined to be judicially unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

25. Contingency. Notwithstanding anything to the contrary contained herein, this Agreement and the obligations of the parties hereunder are contingent upon the full execution and delivery by PSE&G and Contractor of a contract for the installation of the Solar Facility.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have executed this Agreement as of the day and year first above written.

**Public Service Electric and Gas Company**

By: \_\_\_\_\_  
Name:  
Title:

**[Lessor]**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**Property Description**

[To be provided by Lessor and Contractor]

**EXHIBIT B**

**Solar Facility Description**

[To be provided by Lessor and EPC Contractor]

**EXHIBIT C**

**Site Plan**

**EXHIBIT D****Rent**

1. Rent for the period beginning with the commencement of construction and terminating on the commercial operation date, defined as the date the Solar Facility is qualified to receive SRECs (the “COD”), shall be \$\_\_\_\_\_ per month, which shall be (a) prorated for partial months, and (b) due and payable in a lump sum on or about the COD.
2. Rent for the period beginning with the COD shall be payable quarterly in arrears beginning on the tenth (10<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the COD. The first rental payment shall be pro-rated to account for a partial month (if any) of commercial operation. The rent shall be calculated as follows:
  - a. After the final New Jersey Board of Public Utilities (NJBPU) inspection of the Solar Facility, the estimated annual energy production of the as-built Solar Facility (in AC kilowatt hours) shall be determined in accordance with a methodology consistent with the NJBPU’s SREC certification review process, i.e., PV Watts v.1; and
  - b. such estimated annual energy production (in kWh) shall be multiplied by \$\_\_\_\_\_ (the “Multiplier”). The Multiplier shall be increased by \_\_\_\_\_ percent (0.0%) as of each anniversary of the COD during the Term.
3. During the term of the Agreement, there shall be no adjustment or “true-up” of the rental payment or the calculation thereof to account for the actual annual energy production of the Solar Facility.
4. PSE&G shall pay the rent amount due and owing on or before the tenth (10th) day of the month following the end of a quarterly billing period. If such amount remains unpaid for ten (10) days thereafter, PSE&G shall pay a late charge equal to five percent (5%) of the late payment. In addition, all amounts not paid within fifteen (15) days after notice of nonpayment by Lessor to PSE&G due shall bear interest at a rate the date same was originally due (without regard to any grace period) at a rate equal to the greater of: (a) five percent (5%) per annum or (b) two percent (2%) plus the then-current Wall Street Journal Prime Rate; but in neither of such events shall such interest exceed the maximum permitted by applicable law.

**EXHIBIT E**

**Insurance Requirements**

**Insurance Requirements for Lessor:**

1. Lessor agrees to provide the following insurance coverages at its own expense that will cover any personal injuries or accidents that may occur as a direct result of the activities conducted by Lessor (including any activities of Lessor's employees, consultants, contractors or other agents) on the Lessor's premises:

a. Commercial General Liability insurance on an "occurrence" basis, including coverage for bodily injury and death, personal injury, property damage, contractual liability, and products and completed operations with limits as follows; \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

b. Workers' Compensation and Employer's Liability insurance with limits as follows; workers' compensation – statutory, employer's liability - \$1,000,000 each accident and in the aggregate.

c. Umbrella/Excess Liability insurance of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Such coverage shall be on a per occurrence basis and be over and above coverage provided by the policies described in paragraphs a, Commercial General Liability, and b, Employer's Liability above.

d. Pollution/Environmental Liability insurance with limits of at least \$2,000,000 per occurrence (particularly applicable to the provisions of Section 19.c of this Agreement).

e. All Risk Property insurance covering the repair and/or replacement cost of Lessor's property on the Lessor's premises as defined in this Agreement. This insurance would exclude PSE&G property including the solar electric generating facility as defined in this Agreement.

2. PSE&G shall be included as an additional insured under the coverage outlined in paragraphs 1. a, c, and d above.

3. Lessor shall provide a certificate of insurance executed by an authorized representative of Lessor's insurer as evidence of its compliance with the requirements of paragraphs 1 and 2 above. Lessor's insurer will provide PSE&G with thirty (30) days prior written notice of any cancellation, changes or modifications to said insurance.

**Insurance Requirements for PSE&G:**

1. PSE&G shall maintain for the duration of the Agreement insurance against claims for injuries to persons and/or damage to property which may arise from or in connection with the performance of work hereunder by PSE&G, its agents, representatives, employees, contractors or subcontractors. Prior to commencing work at the site, PSE&G shall provide the Lessor with a Certificate of Insurance or Self-Insurance, signed by a person authorized by the insurer or

PSE&G to bind coverage on its behalf. The Certificate of Insurance shall be delivered to the Lessor before work commences at the Premises.

2. PSE&G has the right to self-insure any of the coverages set forth above or to provide such coverages through insurance provided by PSE&G's contractors. If actual insurance policies are maintained in lieu of PSE&G's self-insurance, the Lessor is to be added as an additional insured only as their interest may appear on all Certificates of Insurance associated with this contract.

#### Minimum Scope and Limits of Insurance

A. Comprehensive General Liability Insurance including Completed Operations Coverage, covering bodily injury, personal injury and property damage. Limits of Liability shall not be less than \$1,000,000 Occurrence and \$2,000,000 policy aggregate. The General Liability Insurance must include coverage for XCU (Explosion, Collapse and Underground).

B. Workers' Compensation and Employers Liability Insurance as required by the State of New Jersey.

C. Commercial Automobile Liability Insurance, with limits of liability not less than \$1,000,000 Combined Single Limit.

D. Umbrella Liability Insurance with limits of liability not less than \$4,000,000.

E. Builders Risk Insurance

**EXHIBIT F**

**Subordination Agreement**

Date: \_\_\_\_\_

Lender: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Lessor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Lessee: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Property: \_\_\_\_\_

Mortgage: \_\_\_\_\_

Lease: \_\_\_\_\_

Premises: \_\_\_\_\_

In consideration of the mutual agreements made herein, the Lender and the Lessee agree:

1. Subordination. The Lease is subject and subordinate to the Mortgage and to all advances now or hereafter made thereunder or any modifications, amendments and extensions thereto, with the same force and effect as if the Mortgage had been executed, delivered, recorded, and all advances had been made thereunder, prior to execution and delivery of the Lease, and to all amendments, replacements, renewals, consolidations and extensions thereof, whether securing the same principal amount or otherwise.

2. Non-disturbance. Provided the Lease is in effect and Lessee is not then in default thereunder beyond applicable cure periods, then, in the event of foreclosure of the Mortgage or Lender's acceptance of a deed in lieu of foreclosure:

- a. the Lease shall continue in full force and effect and Lessee's possession of the Premises shall not be disturbed by Lender;
- b. Lender will not name Lessee as a party in any action or proceeding to foreclose the Mortgage or to exercise any of its other rights under the Mortgage or under law; and
- c. any sale of the property pursuant to foreclosure or otherwise will be subject to all of Lessee's rights under the Lease.

3. Attornment. If Lender succeeds to the rights of Lessor under the Lease, whether by foreclosure, deed in lieu of foreclosure or otherwise, Lessee will attorn to Lender, and Lender will accept such attornment, for the unexpired term of the Lease, subject to all of the terms of the Lease; provided, however:

a. Lender shall not be bound by the payment to Lessor of rent farther in advance than as permitted or required under the Lease;

b. Lender shall not be liable for any act or omission of Lessor, or for any fact, circumstance or condition existing or arising prior to Lender's succession in interest to Lessor, except if Lender received notice of same pursuant hereto;

c. Lender shall not be subject to any offsets, claims or defenses Lessee might have against Lessor, except if Lender received notice of same pursuant hereto; and

d. if the Lease is not terminated following a casualty or condemnation, then upon the request of either Lessor or Lessee, Lender shall permit the use of any insurance proceeds or eminent domain awards for repair and restoration.

4. Notice and Cure. Notwithstanding any provision of the Lease to the contrary, Lessee agrees to deliver to Lender, in the manner set forth in Paragraph 8 hereof, a copy of any notice of default sent to Lessor by Lessee whenever Lessee shall give any such notice of default to Lessor; provided Lessee's failure to do so shall not affect the effectiveness of such notice as to Lessor. Lender shall have the right, but not the obligation, to cure such default within the time periods allowed Lessor under the Lease, provided such periods shall run from the date Lessor receives notice pursuant hereto.

5. Payment of Rent to Lender. If in the future there is a default by Lessor in the performance and observance of the terms of the Mortgage, Lender may, at its option, require all rents and all other payments due under the Lease be paid directly to Lender. Upon notification to that effect by Lender to Lessee, Lessor HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS Lessee and Lessee agrees to pay any payments due under the terms of the Lease to Lender. Such payments shall constitute payments under the terms of the Lease and Lessor shall have no claim against Lessee by reason of such payments made to Lender, nor shall Lessee be obligated to inquire as to the existence of any default or the right of Lender to make such request.

6. Further Assurances. The subordination provision hereof is effective upon execution hereof and the non-disturbance and attornment provisions hereof shall operate immediately upon Lender's succeeding to the interest of Lessor in the Premises without execution of any further instrument. Lender and Lessee agree, however, to execute and deliver from time to time such further documents as either party reasonably deems necessary or appropriate to evidence their agreement hereunder.

7. Lessee's Property. Lender hereby expressly waives any interest in the Solar Facility and any equipment, trade fixtures or other personal property now or hereafter located on or affixed to the Premises or any portion thereof regardless of the manner in which same is attached or affixed to the Premises, agrees the same does not constitute fixtures or realty and acknowledges Lessee is authorized to remove same.

8. Successors and Assigns. The term “Lender”, as used herein, unless the context requires otherwise, shall include the successors and assigns of Lender and any persons or entity that shall become the owner of the Property by reason of a foreclosure of the Mortgage or an acceptance of a deed or an assignment in lieu of foreclosure or otherwise. The terms “Lessor” and “Lessee” as used herein shall include their respective successors and assigns.

9. Notices. All notices given hereunder shall be in writing and shall be deemed received at the earlier of when delivered (or delivery is refused) in hand or by overnight courier for which a receipt of delivery is given, by certified or registered mail, return receipt requested, addressed to Lessee and Lender at the addresses appearing on the first page hereof, or to such other address or addresses as the parties may from time to time specify by written notice so given.

10. Governing Law. This Agreement shall be interpreted in accordance with and governed by the law of the State of New Jersey

11. Changes in Writing. This Agreement may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed under seal as of the date first above written.

LENDER:

By: \_\_\_\_\_

Name:

Title:

LESSEE:

By: \_\_\_\_\_

Name:

Title:

LESSOR:

By: \_\_\_\_\_

Name:

Title:

# **EXHIBIT D**

## GROUND LEASE

This GROUND LEASE (“Lease” or “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”), by and between \_\_\_\_\_ a \_\_\_\_\_ (“Lessor”) and Public Service Electric and Gas Company, a New Jersey corporation (“PSE&G” or “Lessee”). PSE&G and Lessor are also referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, PSE&G desires to lease real property to develop, construct, own and operate solar photovoltaic electric generating facilities at Lessor’s property located at \_\_\_\_\_; and

WHEREAS, Lessor has agreed to lease certain real property to PSE&G for the construction, operation and maintenance of the solar powered electric generating facilities.

NOW, THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows.

### Article 1. DEFINITIONS

1.1. **Definitions.** As used in this Lease, the following terms shall have the respective meanings set forth below.

“Affiliate” of a specified Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Applicable Bankruptcy Law” has the meaning set forth in Section 14.1(d).

“Assignment” has the meaning set forth in Section 16.1.

“Business Day” means a Day on which Federal Reserve member banks in New York City are open for business.

“Change in Law” means a change in applicable Law that either (a) renders the performance of this Agreement illegal or unenforceable, or (b) modifies, eliminates, reduces, or abolishes tax incentives and credits available under the Code as of the Effective Date.

“Claims” means, with respect to any Indemnified Person, all claims or actions (including claims for Losses) asserted, threatened or filed against such Indemnified Person by any Third Party, whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an Indemnity in favor of such Indemnified Person, whether such claims or actions are asserted, threatened or filed prior to or after the termination of this Lease, and, in the case of

Indemnification arising under Section 13.1(b) or Section 13.2(b), shall include any such claims or actions asserted, threatened or filed by PSE&G or Lessor, as applicable.

“COD” or “commercial operation date” means the date the Solar Facilities are qualified to receive solar renewable energy certificates (“SRECs”).

“Code” means the Internal Revenue Code of 1986, as amended.

“Day” means a period of 24 consecutive hours, beginning at midnight ET on any calendar day.

“Defaulting Party” has the meaning set forth in Section 14.1.

“Early Termination Date” has the meaning set forth in Section 14.2(a).

“Entity” means a corporation, limited liability company, partnership (including a general partnership, joint venture, limited partnership, limited liability partnership or partnership association), trust (including a business trust), estate, Governmental Entity or any other entity.

“Environment” means ambient air, surface water, ground water, land surface and subsurface strata, and natural resources.

“Environmental Laws” means all Laws in effect from time to time regulating Hazardous Materials; the protection of the Environment; pollution; contamination; or cleanup of Hazardous Materials, pollution or contamination; including all of the following federal Laws, and their implementing regulations, as well as any amendments to such Laws, and all state and local Laws that regulate the same subject matter: (a) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 *et seq.*; (b) the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.*, including the Resource Conservation and Recovery Act (RCRA) and the Laws governing underground storage tanks; (c) the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 *et seq.*, including those provisions governing use and disposal of Polychlorinated Biphenyls (PCBs); (d) the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §1801 *et seq.*; (e) the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136 *et seq.*; (f) the Clean Air Act, 42 U.S.C. §7401 *et seq.*; (g) the Clean Water Act, 33 U.S.C. §1251 *et seq.*; (h) the Emergency Planning and Community Right-to-know Act (EPCRA, SARA Title III), 42 U.S.C. §11001 *et seq.*; (i) the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; (j) the Oil Pollution Act, 33 U.S.C. §2701 *et seq.*; and (k) the Endangered Species Act, 16 U.S.C. §1531 *et seq.*

“ET” means eastern standard time or eastern daylight saving time, as applicable.

“Event of Default” has the meaning set forth in Section 14.1.

“Existing Infrastructure” means the existing infrastructure and other facilities of Lessor on the Leased Premises and all betterments, improvements, alterations, replacements and substitutions thereof.

“Financing Party” means the holder, trustee or beneficiary of any mortgage, deed of trust or other indenture that constitutes, or any security interest given in connection therewith that together constitute, a lien upon (a) this Lease and the leasehold estate hereby created and Lessee’s interest in the Solar Facilities, in the case of Lessee or (b) the Lessor Property, in the case of Lessor.

“Force Majeure” means an event that is not within the reasonable control, and without the fault or negligence, of the claiming Party, and which by the exercise of due diligence such claiming Party is unable to prevent or overcome. The following shall be conclusively deemed to constitute Force Majeure, regardless of whether they satisfy the requirements of the immediately preceding sentence: acts of God; fire; explosion; flood; windstorm or other unusually severe weather condition; civil disturbance; strike, work stoppage or other labor dispute; labor or material shortage; embargo; insurrection; riot; sabotage; breakdown of or damage to plants, equipment or facilities; a Change in Law; and action or restraint by court order or Governmental Entity (so long as the claiming Party has not applied for or sought or assisted in applying for or seeking such government action).

“Governmental Entity” means a federal, state, local or foreign governmental authority; a state, province, commonwealth, territory or district thereof; a county or parish; a city, town, township, village or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, office, commission, committee, council or other administrative body of any of the foregoing, including the New Jersey Board of Public Utilities; and any court or other judicial body.

“Hazardous Materials” means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste” or words of similar import under any applicable Environmental Laws, and leachate that contains any of the foregoing.

“Improvements” means the Solar Facilities, the electrical interconnection facilities and all other improvements, machinery, equipment, fixtures, facilities, structures and personal property of every kind and description that may be erected or placed on the Leased Premises by PSE&G or its contractors during the Term of this Lease.

“including” means “including without limitation” (and grammatical variants such as “include” have correlative meanings).

“Indemnified Person” has the meaning set forth in Section 13.3.

“Indemnify” means to indemnify, protect, defend and hold harmless (and grammatical variants such as “Indemnity” and “Indemnification” have correlative meanings).

“Indemnifying Party” has the meaning set forth in Section 13.3.

“Interest Rate” means, for any date, the lesser of (a) the sum of the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street*

*Journal* under “Money Rates” on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the highest rate permitted by applicable Law.

“Law” means any applicable constitutional provision, statute, act, code (including the Code), law (including common law), regulation, rule, ordinance, order, writ, judgment, decree, ruling, decision or other legal or regulatory determination of a Governmental Entity having valid jurisdiction.

“Leased Premises” means the portion of the Lessor Property leased to PSE&G hereunder as more fully described in Exhibit A.

“Lessor Indemnified Parties” has the meaning set forth in Section 13.2.

“Lessor Property” means the parcels of land in Block \_\_\_ Lot \_\_\_ in the municipality of \_\_\_\_\_ owned by Lessor.

“Lien” means all burdens, encumbrances and defects affecting the ownership of an asset, including (a) liens, security interests, mortgages, deeds of trust, pledges, conditional sale or trust receipt arrangements, consignments or bailments for security purposes, finance leases, or other encumbrances of any nature whatsoever securing any obligation, whether such interest is based on common law, statute or contract; (b) any rights of first refusal or any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership; and (c) any other reservations, exceptions, covenants, conditions, restrictions, leases, subleases, licenses, easements, servitudes, occupancy agreements, equities, charges, assessments, defects in title, liabilities, claims, agreements, obligations, encroachments and other burdens, and other title exceptions and encumbrances affecting property of any nature, whether accrued or unaccrued, absolute or contingent, legal or equitable, real or personal, or otherwise.

“Losses” means losses; liabilities (other than liabilities arising under any contract between a Party and any Affiliate or Representative of such Party); causes of action; assessments; cleanup, removal, response, remediation and restoration obligations; judgments; awards; damages, whether to persons or property; natural resource damages; fines; fees; penalties; and costs and expenses (including litigation costs and attorneys’ and experts’ fees and expenses arising out of any Proceeding); in each case to the extent arising out of, caused by or in any manner related to a Claim.

“Month” means a period of time beginning at 12:00 a.m. ET on the first Day of any calendar month and ending at 11:59 p.m. ET on the last Day of such calendar month.

“Non-Defaulting Party” has the meaning set forth in Section 14.1.

“Non-PSE&G Hazardous Materials” has the meaning set forth in Section 5.5(c).

“Permit” means any permit, certificate, license, franchise, authorization, approval, variance, exemption, concession, lease, instrument or order of any Governmental Entity.

“Permitted Liens” means the Liens described on Exhibit C.

“Person” means any Entity or natural person.

“Plant” means the Lessor’s existing factory, building, or installation.

“Proceeding” means a judicial, administrative or arbitral proceeding (including a lawsuit or an investigation by a Governmental Entity), commencing with the institution of such proceeding through the issuance, service or delivery of the applicable Claim or other applicable event.

“Property” means the Leased Premises and the Improvements.

“PSE&G Hazardous Materials” has the meaning set forth in Section 5.5(c).

“PSE&G Indemnified Parties” has the meaning set forth in Section 13.1.

“Representative” means, with respect to any Person, each managing member, manager, managing partner, director, officer, employee, agent, consultant (including consulting engineers), advisor (including counsel and accountants), contractor (including, in the case of PSE&G, the contractor and the operator) and other representative of such Person, and each other Person performing services for or on behalf of such Person.

“Restoration Obligations” has the meaning set forth in Section 3.3.

“Scheduled Expiration Date” means a date that is twenty (20) years from the date of commercial operation of the Solar Facilities.

“Solar Facilities” means the solar powered electric generating facilities including photovoltaic panels, conduit, electrical interconnections, and associated equipment owned by PSE&G to be installed hereunder.

“Third Party” means, with respect to a Party, any Person other than such Party, its Affiliates and its Representatives.

“Work” means all of the work and activities reasonably related to designing, constructing, installing, modifying, removing, testing, operating and maintaining the Solar Facilities.

1.2. **References.** References in this Lease to Exhibit, Schedule, Article, or Section numbers shall be to Exhibits, Schedules, Articles, or Sections of this Lease, unless expressly stated to the contrary. References in this Lease to “hereby,” “herein,” “hereinafter,” “hereof,” “hereunder,” and words of similar import shall be to this Lease in its entirety and not only to the particular Exhibit, Schedule, Article, or Section in which such reference appears.

## **Article 2. LEASE OF LEASED PREMISES**

2.1. **Lease of Leased Premises.** In consideration of the covenants and agreements herein made by the Parties, Lessor hereby lets, demises and leases to PSE&G, and PSE&G hereby leases from Lessor, the Leased Premises for the Term upon the terms and conditions herein

provided. Lessor hereby also grants to Tenant, for a period coterminous with this Lease, a non-exclusive right of way and easement to use and access such Leased Premises across or through other portions of the Lessor Property or any surrounding or nearby premises owned or leased by Lessor, passage through which is necessary or convenient to gain access to such Leased Premises.

2.2. **Quiet Enjoyment.** Lessor covenants and agrees that PSE&G shall enjoy quiet use, enjoyment and possession of the Leased Premises for the Term, subject to the provisions of this Lease, without interference or molestation by anyone claiming by, through or under Lessor. Lessor shall protect and defend the right, title, and interest of PSE&G hereunder from any adverse claim. Landlord will not initiate or conduct activities it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar Facilities or the function thereof (including activities that may adversely affect the Photovoltaic System's exposure to sunlight) and shall promptly cease any such activities upon notice from PSE&G.

2.3. **Contractor and Other Representatives of PSE&G.** Lessor acknowledges that PSE&G has or will retain one or more contractors to conduct the Work. Lessor agrees that such contractors shall be permitted to enjoy the rights granted to PSE&G under this Lease in connection with their performance of such services for PSE&G, subject to the terms and conditions of this Lease and PSE&G's separate contractual arrangements with such Persons. PSE&G shall have the right to designate from time to time by written notice to Lessor other Representatives to act on behalf of PSE&G with respect to the matters set forth in the applicable notice. PSE&G shall be responsible for the acts or omissions of such Representatives on the same terms as provided for PSE&G's direct responsibility hereunder, and Lessor shall be entitled to rely on any notice or direction given to it by any such Representative with respect to the matters set forth in the applicable notice in the absence of any written notice to the contrary by PSE&G.

2.4. **Site Preparation.** Lessor shall deliver the Leased Premises to PSE&G on the Effective Date clean and free of debris, with any grass mowed and trees and shrubs trimmed. Promptly after the Effective Date, and except as set forth in Section 6.4(c), PSE&G shall, at PSE&G's cost, test, verify or prove the location as suitable for the construction of the Solar Facilities, as determined by PSE&G in its sole discretion. Lessor will cooperate in any reasonable manner requested by PSE&G in connection with the foregoing. PSE&G shall promptly advise Lessor if the Leased Premises is not suitable for the Solar Facility. If PSE&G deems the site suitable, PSE&G shall perform all site preparation work on the Leased Premises.

### **Article 3. TERM**

3.1. **Term.** The Lease shall commence on the Effective Date and terminate the first to occur of (a) the Scheduled Expiration Date or (b) the date on which the Lease is terminated in accordance with its terms ("Term").

3.2. **Rent.**

(a) Rent for the period beginning as of the day on which physical work by PSE&G or its contractor directly related to the construction of the Solar Facilities begins at the

Leased Premises and terminating on the Rent Commencement Date shall be \$\_\_\_\_\_ per month, which shall be (i) prorated for partial months, and (ii) due and payable in a lump sum on or about the Rent Commencement Date (or the effective date of termination if this Agreement is terminated by PSE&G before the COD, other than upon Licensor's default).

(b) Rent for the period beginning with the Rent Commencement Date shall be payable quarterly in advance. The first rental payment shall be pro-rated to account for a partial month (if any) of commercial operation. The Rent for such period shall be calculated as follows:

(i) The estimated annual energy production of the as-built Solar Facility (in AC kilowatt hours) shall be determined in accordance with a methodology consistent with the NJBPU's SREC certification review process, i.e., PV Watts v.1 after the final New Jersey Board of Public Utilities (NJBPU) inspection of the Solar Facilities (or, if the Rent Commencement Date occurs before completion of the Solar Facilities, then based on the design specifications of the Solar Facilities until the NJBPU inspection is complete); and

(ii) such estimated annual energy production (in kWh) shall be multiplied by \$0.000 (the "Multiplier"). The Multiplier shall be increased by \_\_\_\_\_ percent (0.0%) as of each anniversary of the COD during the Term.

(iii) Subject to completion of the above-referenced NJBPU inspection, the Rent for the Term is set forth on Exhibit \_\_\_.

(c) During the Term, there shall be no adjustment or "true-up" of the rental payment or the calculation thereof to account for the actual annual energy production of the Solar Facilities.

**3.3. Removal of Solar Facilities.** Except as set forth in Section 3.5, PSE&G shall remove the Solar Facilities (except for below-grade foundations or concrete piers/footings) from the Leased Premises and restore the Leased Premises to its condition prior to the Lease as nearly as reasonably practicable, wear and tear excepted, within twelve (12) months from the end of the Term; *provided, however*, that PSE&G shall not be required to correct or remediate any condition created therein by Lessor or any third party. PSE&G's obligations under this Section 3.3 are collectively referred to herein as the "Restoration Obligations".

**3.4. Purchase Option.** Lessor shall have the option to purchase the Solar Facilities at the end of the Term upon such price and terms to be mutually agreed upon by the Parties. In order to exercise the option, Lessor shall, not more than fifteen (15) nor later than twelve (12) months prior to the expiration of the Term, deliver written notice to PSE&G setting forth the proposed purchase and sale price. The option will automatically expire if the Lessor fails to give a timely notice. If the Parties are unable to reach a definitive purchase and sale agreement within six (6) months of such written notice, PSE&G shall remove the Solar Facilities in accordance with Section 3.3. If Lessor exercises its option to purchase, PSE&G shall be released from all Restoration Obligations hereunder and Lessor shall be responsible for compliance with all Laws

associated with the transfer, ownership, operation, maintenance and decommissioning of the Solar Facilities.

#### **Article 4. OWNERSHIP OF IMPROVEMENTS**

4.1. **Ownership of Improvements.** The Solar Facilities shall be the property of PSE&G. Lessor acknowledges that notwithstanding the Solar Facilities' presence on the Leased Premises, PSE&G or its affiliate or transferee is the exclusive owner of electricity generated thereby and of any SRECs attributable thereto.

4.2. **Solar Facilities Not a Fixture.** The Parties agree that, even if the Solar Facilities are attached or affixed to or incorporated in or made part of the Leased Premises, such Solar Facilities shall not be, become or be deemed fixtures or otherwise part of the real property interests constituting the Leased Premises and shall not be or become subject to any Lien created by, through, or under Lessor. The Solar Facilities are and the Lessor and PSE&G intend that: (i) the Solar Facilities will, at all times, be personal property and not a "fixture" as defined by Law; (ii) to the extent the Solar Facilities may be connected to the real property, the Solar Facilities are not intended to be connected permanently to the real property and may be removed or disconnected without materially damaging the real property; and (iii) the real property's prior use and purpose will not be changed by the Solar Facilities or by any temporary connection of Solar Facilities to the real property.

4.3. **Collateral Assignment.** PSE&G may mortgage, pledge, grant security interests, or otherwise encumber the Solar Facilities and its interest in this Lease in connection with any construction or permanent financing or refinancing obtained by PSE&G in connection with the installation or operation of the Solar Facilities. Lessor agrees to reasonably cooperate with PSE&G's efforts to obtain financing and agrees to execute a written consent to a collateral assignment of this Lease to any Lender (or agent acting on behalf of Lenders) providing financing to PSE&G in form and substance mutually acceptable to PSE&G and such Lender (or agent).

#### **Article 5. USE, MAINTENANCE AND ALTERATIONS**

5.1. **Permitted Uses.** PSE&G may use the Leased Premises to conduct the Work and all activities reasonably related to the purposes of the Lease. In addition, PSE&G may use and occupy the Lessor Property and the Existing Infrastructure in a manner that does not materially interfere with Lessor's use of the Lessor Property for (i) the conduct of the Work, and (ii) any other reasonably related and legally permitted use. At all times during the Term, PSE&G shall have the exclusive and continuous right to unobstructed direct sunlight for operation of the Solar Facilities.

5.2. **Reservation of Rights.** Lessor reserves a right of access to the Leased Premises for the purpose of (i) owning, operating and maintaining the Lessor's Plant, (ii) using the Lessor Property (other than the Leased Premises) and the Existing Infrastructure and (iii) exercising its rights and remedies under this Lease. Lessor shall exercise such right of access in a manner that does not interfere with PSE&G's right to use the Leased Premises or obstruct direct sunlight to

the Solar Facilities. Such right of access may be exercised by written notice to PSE&G unless exigent circumstances require Lessor to immediately access the Leased Premises.

5.3. **Insurance.** PSE&G and Lessor shall carry and maintain throughout the Term the insurance coverage described in Exhibit D.

5.4. **Maintenance; Alterations.** PSE&G shall maintain the Improvements in good condition and repair consistent with sound engineering and operating practices. PSE&G, in its sole discretion, shall have the right from time to time to make, or cause to be made, at its sole cost and expense, repairs, improvements, additions, alterations and changes, in or to, or to demolish or remove, the Improvements or any other buildings, structures or improvements on the Leased Premises, other than the Existing Infrastructure, to the extent it deems necessary or desirable to carry on any activity or use permitted by Section 5.1.

5.5. **Compliance with Laws.**

(a) The Parties shall comply in all material respects with all Laws, including Environmental Laws, and all Permits (and comply with all valid orders of Governmental Entities under such Laws and Permits).

(b) PSE&G shall promptly deliver to Lessor, and Lessor shall promptly deliver to PSE&G, true and complete copies of any and all notices or correspondence or requests from, or required to be submitted to, any Governmental Entity or Third Party relating to non-compliance with any Laws or the release, disposal, use, storage, generation, treatment, transportation or handling of Hazardous Materials on, in, under or about the Leased Premises or Lessor Property.

(c) PSE&G shall not use, store, generate, treat, transport or handle, any Hazardous Materials on, in, under or about the Lessor Property except in the normal course of operation of the Solar Facilities and in compliance in all material respects with applicable Environmental Laws and Permits. Promptly after becoming aware of the presence of any Hazardous Materials on, in, under or migrating from the Leased Premises that was stored, released, spilled or discharged to or on the Leased Premises, as applicable, by PSE&G ("PSE&G Hazardous Materials"), PSE&G shall, at its sole cost, liability and expense, take all actions required by Environmental Laws or pursuant to any valid orders, directives, notices or agreements issued by or entered into with a Governmental Entity, in coordination with Lessor: (i) to remove or treat such PSE&G Hazardous Materials and to treat or restore the Environment to the condition the Environment was in prior to such release, spill or discharge of such PSE&G Hazardous Materials; and (ii) to prevent further or renewed releases, spills, discharges or spread of PSE&G Hazardous Materials.

(d) Notwithstanding the provisions of Section 5.5(c), PSE&G shall have no obligation to remove or treat any Hazardous Materials on, under or migrating from the Leased Premises that were not stored, released, spilled or discharged to or on the Leased Premises by PSE&G ("Non-PSE&G Hazardous Materials"), or to treat, restore or replace any soil, water or other portions of the Environment to any condition other than that existing immediately prior to such release, spill or discharge of PSE&G Hazardous

Materials. If, in the performance of its obligations under Section 5.5(c), PSE&G should perform any removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials, either (i) because PSE&G is required to do so by Environmental Laws or pursuant to any valid orders, directives, notices or agreements issued by or entered into with a Government Entity or (ii) because it is not reasonably practicable or feasible to perform its obligations under Section 5.5(c) without performing such additional actions, then Lessor shall, within twenty (20) Business Days of its receipt of an invoice from PSE&G, reimburse PSE&G for any costs, expenses or other amounts reasonably incurred by PSE&G in performing such additional actions; *provided, however*, that PSE&G shall not perform any removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials without giving Lessor at least thirty (30) Days' (unless more timely action is required by order of any applicable Governmental Entity) prior notice of the condition or the order, directive, notice or agreement giving rise to the necessity for such removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials, specifying the particulars thereof, and permitting Lessor a reasonable opportunity to perform such removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials on PSE&G's behalf (at Lessor's sole cost and expense).

(e) In all instances in which PSE&G or any Representative is permitted to store or otherwise use or handle Hazardous Materials pursuant to Section 5.5, such Hazardous Materials shall be handled, stored, treated or used in compliance in all material respects with all applicable Environmental Laws and Permits and in such a manner as not to subject Lessor to liability or any permitting requirements for the treatment, storage or disposal of Hazardous Materials or otherwise under applicable Laws.

(f) If PSE&G or any other Person shall discover the presence of any Hazardous Materials (other than PSE&G Hazardous Materials) on, in, under or migrating from the Leased Premises that was stored, released, spilled or discharged to or on the Leased Premises, as applicable, after the Effective Date by an Entity other than PSE&G, Lessor shall, at its sole cost, liability and expense, take all actions that may be required by Environmental Laws or pursuant to any valid orders, directives, notices or agreements issued by or entered into by Lessor with a Governmental Entity under any Environmental Laws relating thereto, in coordination with PSE&G and in a manner so as to minimize interference with the operation of the Solar Facilities. In addition, during the Term, Lessor shall comply with all valid orders of any Governmental Entity relating to the presence or release of any Hazardous Materials (other than PSE&G Hazardous Materials) on, in, under or migrating from the Leased Premises.

(g) Should the termination of this Lease subject the Leased Premises or the Lessor Property to the compliance requirements of the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. ("ISRA"), Lessor shall be solely responsible to comply therewith (except to the extent such compliance with ISRA is caused or necessitated by the release, spillage or discharge of PSE&G Hazardous Materials to, on, in, under or migrating from the Leased Premises) and Lessor shall obtain prior to the termination of the Lease: (x) a No Further Action Letter approving Lessor's Negative Declaration; or (y) a Remediation Agreement with the New Jersey Department of Environmental Protection ("NJDEP") obligating Lessor to comply with requirements or ISRA, or other

such approvals from the NJDEP indicating that Lessor has complied, or is complying, with the requirements of ISRA. Notwithstanding the provisions of Paragraph 13.2 and the exception set forth herein, Lessor shall indemnify and hold harmless PSE&G for any costs, losses or associated with compliance with ISRA.

5.6. **Security.** PSE&G shall be entitled to install such security measures as it deems advisable or necessary to control and restrict access to the Leased Premises, Solar Facilities and Improvements, including without limitation, fencing with locked gates and remote monitoring equipment.

## Article 6. UTILITIES AND SERVICES

6.1. **Electricity.** At no cost to PSE&G, Lessor shall make available at a mutually agreeable location a permanent source of electricity (120V AC, 15 Amp.) to be used by PSE&G or its contractor(s) as may be needed or required in connection with the installation, construction and long-term illumination and monitoring of the Solar Facilities.

6.2. **Storm Water.** PSE&G shall comply with all applicable Law with respect to the treatment of storm water at the Leased Premises.

6.3. **Other Services.** At no cost to PSE&G, Lessor shall conduct a one-time mowing and removal of the existing weeds and brush growth in the solar array area (excluding any tree clearing which will be performed by PSE&G or its contractor).

6.4. **Coordination.** Lessor shall coordinate with PSE&G and its Contractor regarding access to the Leased Premises and scheduling construction activities.

## Article 7. FORCE MAJEURE

7.1. **Force Majeure.** If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations (other than the obligation to make payments that are due and outstanding) under this Lease, such Party shall give notice orally to the other Party as soon as reasonably practicable, followed within five Business Days thereafter by a written notice setting forth, in reasonable detail, the cause or causes constituting such Force Majeure. The obligations of the Party affected by such Force Majeure (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent made necessary, and for no longer than is required, by the cause or causes constituting such Force Majeure. The other Party, within ten Business Days after receipt of such written notice, may give written notice that it disputes the existence of Force Majeure.

7.2. **Remedy for Force Majeure.** The Party affected by the Force Majeure shall initiate and continue commercially reasonable good faith efforts to remedy the Force Majeure with all reasonable dispatch; *provided, however*, that the settlement of strikes, lockouts or other labor disputes shall be totally within the sole discretion of the affected Party.

7.3. **Continuance of Force Majeure.** If an event of Force Majeure affecting performance by either Party persists for a continuous period of more than three (3) Months, the other Party shall have the right, upon not less than one (1) Month's prior written notice, to terminate this Lease

and the obligations of the Parties hereunder, except those rights and obligations specifically stated to continue after termination.

## **Article 8. CONDEMNATION; CASUALTY**

8.1. **Condemnation.** If Lessor receives notice of a proposed taking by eminent domain of any part of the Leased Premises, Lessor will notify PSE&G of the proposed taking promptly upon receiving said notice and PSE&G will have the option: (a) if such condemnation interferes with PSE&G's operations, to declare this Lease null and void and thereafter neither party will have any liability or obligation hereunder, except for such obligations as expressly survive expiration or termination, and any monies owed by either party to the other up to the date of such taking shall be paid by the date of such taking; or (b) to remain in possession of that portion of the Leased Premises that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Leased Premises so taken. With either option, PSE&G shall have the right to contest the taking and directly pursue an award for the Solar Facilities, its Improvements, any costs of moving or relocation and any other award to which PSE&G may be entitled.

8.2. **Casualty.** At any time during the Term of this Lease, if fire or other casualty to all or part of the Improvements results in (a) a total destruction of the Improvements, or (b) damage to all or part of the Improvements that materially impairs PSE&G's use of the Improvements (as determined in good faith by PSE&G), then PSE&G shall have the right, upon not less than three (3) Business Days' prior written notice, to terminate this Lease and the obligations of the Parties hereunder, except those rights and obligations specifically stated to continue after termination. If a fire or other casualty occurs to all or part of the Improvements (other than as described in the immediately preceding sentence) and PSE&G elects not to restore the Improvements substantially to the same condition as existed immediately prior to such fire or casualty, PSE&G shall remove the damaged or destroyed Improvements and remove all other debris from the Leased Premises to the extent caused by such fire or casualty.

## **Article 9. LIMITATION OF REMEDIES AND LIABILITY**

9.1. **Limitation of Remedies.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS LEASE SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH ONE OR MORE EXPRESS REMEDIES OR MEASURE OF DAMAGES ARE HEREIN PROVIDED, SUCH EXPRESS REMEDIES OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDIES, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED.

9.2. **Liquidated Damages.** TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## Article 10. TAXES

10.1. **Real Property Taxation.** The Parties agree that, even if the Solar Facilities or portions thereof are temporarily attached or affixed to or incorporated in or made part of the Leased Premises, same shall not be or become fixtures or otherwise part of the real property interests. The Solar Facilities are and the Parties intend: (i) the Solar Facilities will, at all times, be personal property and not a “fixture” as defined by Law; (ii) to the extent the Solar Facilities may be connected to the real property, the Solar Facilities are not intended to be connected permanently to the real property and may be removed or disconnected without materially damaging the Solar Facilities or the real property; and (iii) the real property’s prior use and purpose will not be changed by the Solar Facilities or by any temporary connection of Solar Facilities to the real property. The Parties further acknowledge the Solar Facilities are not intended to be included in the assessed valuation of the Lessor Property for real property taxation purposes. Lessor will be responsible for full and timely payment of all real property taxes with respect to the Lessor Property and Plant. If it is reasonably likely the Solar Facilities will be treated as a fixture and subject to real property taxes, Lessor shall (a) give prompt notice to PSE&G and (b) apply for any property tax exemption available for renewable energy systems under applicable law. If, subsequent to the COD, Lessor’s real property taxes are materially increased due to the Solar Facilities, notwithstanding any tax exemption available, or if any material alternate or additional taxes are imposed on Lessor or PSE&G due to the presence or operation of the Solar Facilities, then the Party responsible for payment thereof may terminate this Lease upon not less than thirty (30) days’ notice, which notice must be given, if at all, within sixty (60) days of receipt of notice of such imposition; provided such termination shall be (a) void if the other Party assumes responsibility for the payment thereof or the Parties otherwise agree on terms for the payment thereof or (b) tolled in the event either party institutes an action in opposition to such imposition.

## Article 11. REPRESENTATIONS AND WARRANTIES

11.1. **Representations and Warranties.** As a material inducement to entering into this Lease, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Effective Date as follows:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Lease;
- (b) the execution, delivery and performance of this Lease are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its charter, organizational or governing documents or any contract to which it is a party or by which any of its properties is bound or any Law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination of any Governmental Entity applicable to it;
- (c) this Lease constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws affecting creditors’ rights generally, and with regard to

equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

(d) no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings are pending or being contemplated by it or, to its knowledge, threatened against it;

(e) no suits, proceedings, judgments, rulings or orders by or before any court or any other Governmental Entity that could reasonably be expected to materially adversely affect the ability of such Party to perform this Lease are pending or, to its knowledge, threatened or contemplated;

(f) Lessor has obtained the consent of all third parties required to permit it to enter into this Lease; and

(g) Lessor has received no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Lessor Property or any part thereof in lieu of condemnation.

**11.2. Warranty of Title.** Lessor represents and warrants to PSE&G that Lessor has good and indefeasible title to the Leased Premises, free and clear of all Liens, except those Permitted Liens as set forth in Exhibit C.

**11.3. Environmental Condition.** Lessor represents and warrants to PSE&G that there are no Hazardous Materials on, at or under the Leased Premises.

**11.4. No Other Representations or Warranties.** Each of the Parties acknowledges that it has entered into this Lease in reliance upon the express representations and warranties set forth in this Lease and not upon any other representations or warranties.

## **Article 12. ADDITIONAL COVENANTS**

**12.1. Compliance with Laws; Authorizations.** PSE&G covenants and agrees to comply in all material respects with all Laws and Permits in connection with the operation, installation, maintenance, repair, alteration and replacement of the Solar Facilities. Lessor covenants and agrees to comply in all material respects with all Laws and Permits the noncompliance with which could reasonably be expected to have an adverse effect on its ability to perform its obligations under this Lease or have an adverse effect on the rights of PSE&G under this Lease. Each Party shall comply with all valid orders of any Governmental Entity relating to the ownership or operation of the Solar Facilities, the Lessor Property or the Plant, and shall obtain, maintain and keep in force all Permits necessary for it to perform its obligations under this Lease.

**12.2. Confidentiality.**

(a) In the course of performing its obligations under this Lease, each Party may obtain non-public, confidential or proprietary information regarding (i) the Solar Facilities (in the case of Lessor) or the Plant (in the case of PSE&G), and (ii) the other

Party and its Affiliates. Such information that a Party receives from the other Party, whether oral, written or in any other form and whether furnished before or after the Effective Date, together with any analyses or documents prepared by the recipient Party that contains or otherwise reflects such information, is hereinafter referred to as “Confidential Information.” In addition, the provisions of this Lease relating to pricing, services to be provided by Lessor and other economic terms shall also constitute “Confidential Information” as to both Parties.

(b) Confidential Information will not include (i) information that is or becomes generally available to the public otherwise than as a result of disclosure by the recipient Party or (ii) information that is already in, or subsequently comes into, the recipient Party’s possession, provided that the source of such information was not, to the recipient Party’s knowledge, obligated to keep such information confidential.

(c) Each Party agrees that it (i) shall hold Confidential Information in confidence and (ii) shall not, without the other Party’s prior written consent, disclose Confidential Information, directly or indirectly, in any manner whatsoever, to any other Person. Each Party shall retain exclusive rights to the Confidential Information provided by or on behalf of it, and no right or license is or shall be deemed granted by either Party to the other Party as a result of the disclosure of any Confidential Information permitted by this Section 12.2.

(d) Notwithstanding Section 12.2(c), the recipient Party may disclose Confidential Information to its representatives, employees, contractors to the extent such persons need to know such information to assist the Party in performing its obligations, or exercising its rights and remedies, under this Lease, provided that the recipient Party shall direct them to treat such information confidentially, and the recipient Party shall be liable for any breach by its representatives of any of the terms of this Lease.

(e) Upon termination of this Lease, each Party shall promptly, on receipt of written demand from the other Party, (i) return to the other Party its Confidential Information in written form provided to the recipient Party or on its behalf (and all copies thereof), and (ii) destroy all other Confidential Information of the other Party that may exist in the records of the recipient Party (whether in written, electronic or other form); provided, however, that the recipient Party may retain one copy of the other Party’s Confidential Information for archival purposes only and for purposes of responding to, and complying with, requests of Governmental Entities.

(f) Notwithstanding Section 12.2(c), the recipient Party shall be entitled to disclose Confidential Information if, but only to the extent, it is legally required to be disclosed or is otherwise subject to legal, judicial, regulatory or self-regulatory requests for information or documents. The recipient Party shall give the other Party written notice as soon as practicable (which shall be prior notice where possible) of any such disclosure, and the recipient Party shall use its best efforts to obtain assurance that confidential treatment will be accorded the disclosed information.

(g) Without prejudice to the rights and remedies otherwise available to the Parties, each Party shall be entitled to the restraint by injunction of any actual or threatened violation of the provisions of this Section 12.2, it being understood that the rights of each Party set forth in this Section 12.2 are of a special, unique and extraordinary character and that monetary damages are not an adequate remedy for the breach by either Party of its obligations under this Section 12.2.

### **Article 13. INDEMNIFICATION**

**13.1. Indemnification by Lessor.** Lessor shall Indemnify PSE&G and each PSE&G Representative (collectively, the “PSE&G Indemnified Parties”) against any and all actions, claims, demands, costs and expenses, including reasonable attorneys’ fees and expenses for the defense thereof, arising from: (a) the undertaking of any repairs, alterations or modifications to the Plant by Lessor, (b) any willful or negligent act of Lessor, its agents, contractors, servants, employees, customers or invitees, in or about the Lessor Property, and (c) the violation or alleged violation of any Environmental Laws or Permits by Lessor, its Representatives or any business invitee of Lessor, or the presence or release of Hazardous Materials (other than PSE&G Hazardous Materials) on, in, under or migrating from the Lessor Property or Leased Premises. In case of any action or proceeding brought against a PSE&G Indemnified Party by reason of any such claim, upon notice from PSE&G, Lessor covenants to defend such action or proceeding by counsel reasonably satisfactory to PSE&G.

**13.2. Indemnification by PSE&G.** PSE&G shall Indemnify Lessor and each Lessor Representative (collectively, the “Lessor Indemnified Parties”) against any and all actions, claims, demands, costs and expenses, including reasonable attorney's fees and expenses for the defense thereof, arising from: (a) the conduct of PSE&G’s business in connection with the operation of the Solar Facilities and other Improvements on the Leased Premises, (b) any willful or negligent act of PSE&G, its agents, contractors, servants, employees, customers or invitees, in or about the Premises, and (c) except to the extent covered by Section 13.1, the violation or alleged violation of any Environmental Laws or Permits by PSE&G or its Representatives or the presence or release of PSE&G Hazardous Materials on, in, under or migrating from the Leased Premises. In case of any action or proceeding brought against a Lessor Indemnified Party by reason of any such claim, upon notice from Lessor, PSE&G covenants to defend such action or proceeding by counsel reasonably satisfactory to Lessor.

### **13.3. Procedure.**

(a) If any PSE&G Indemnified Party or Lessor Indemnified Party (each, an “Indemnified Person”) seeks Indemnification under Section 13.1 or 13.2, respectively, in respect of a Claim that is asserted against it, such Person shall give prompt written notice of such Claim to the Party from which it seeks Indemnification (the “Indemnifying Party”), stating the nature and basis of the Claim and, to the extent known, the actual or estimated Losses claimed thereby. The failure to give such notice, however, will not affect the obligation of the Indemnifying Party to provide Indemnification in accordance with the provisions of this Article 13 unless and only to the extent such Indemnifying Party is actually prejudiced by such failure. If an Indemnified Person is made the subject of a Proceeding for which an Indemnifying Party may have an Indemnification obligation

under Section 13.1 or 13.2, the Indemnifying Party shall have the right, at its sole cost and expense, to defend such Proceeding in the name or on behalf of the Indemnified Person upon delivery to the Indemnified Person of an instrument in which the Indemnifying Person acknowledges that it is obligated under Section 13.1 or 13.2, respectively, to Indemnify the Indemnified Person against any Losses resulting therefrom. In connection with any such Proceeding, the Indemnifying Party and the Indemnified Person shall render to each other such assistance as may reasonably be required in order to ensure the proper and adequate defense of such Proceeding.

(b) Notwithstanding the foregoing, an Indemnified Person shall have the right (following notice to the Indemnifying Party) to retain its own counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if (i) representation of such Indemnified Person by the counsel retained by the Indemnifying Party would be inappropriate because of actual or potential conflict of interests between such Indemnified Person and the Indemnifying Party; (ii) the Indemnifying Party shall have elected in writing not to employ, or failed to employ, counsel to defend such Proceeding; (iii) the Indemnifying Party shall fail to prosecute such defense with reasonable diligence; or (iv) the Indemnified Person shall have been advised by counsel chosen by it that there may be one or more legal defenses available to such Indemnified Person that are different from or additional to those available to the Indemnifying Party in such Proceeding. If the immediately preceding sentence is inapplicable (or if the Indemnified Person waives its right thereunder), the Indemnified Person shall have the right to employ separate counsel at its own cost and expense in the Proceeding and to consult with the Indemnifying Party regarding the defense thereof; *provided* that, except as otherwise provided below, the Indemnifying Party shall at all times control such defense of such Proceeding. No settlement of any Claim or Proceeding may be made by the Indemnifying Party without the Indemnified Person's consent; *provided* that such consent shall not be necessary if the settlement results in an unconditional release of the Indemnified Person without the admission by the Indemnified Person of guilt, complicity or culpability. An Indemnifying Party shall not be liable for any settlement of any Claim or Proceeding without its consent.

13.4. **Payment.** Upon a determination that an Indemnifying Party is liable for Indemnification under Section 13.1 or 13.2 (by admission of the Indemnifying Party, agreement of the Indemnifying Party and Indemnified Person, or completion of the procedures set forth in Section 13.3), the Indemnifying Party shall pay to the Indemnified Person, within ten Days after such determination, the amount of the Loss Indemnified thereby. Upon the payment in full of any such Loss, the Indemnifying Party making such payment shall be subrogated to the rights of the Indemnified Person against any other Person with respect to the subject matter of such Loss and of any Claim or Proceeding relating thereto.

13.5. **Limitation on Indemnification and Liability Generally.** Notwithstanding any provisions of this Lease to the contrary, in no event shall either Party be liable to an Indemnified Person under any provision of this Lease for any lost business opportunities, or consequential, incidental, punitive or exemplary damages incurred or suffered by an Indemnified Person; *provided, however,* that this Section 13.5 shall not limit PSE&G's rights to Lost Energy Damages.

## Article 14. EVENTS OF DEFAULT AND REMEDIES

14.1. **Event of Default.** An “Event of Default” shall mean the occurrence of any one or more of the following events set forth below in this Section:

(a) any failure by either Party to pay any amount due under this Lease and not reasonably in dispute when due and such failure is not remedied within five (5) Business Days after written notice of such failure is given to such Party by the other Party; or

(b) any representation or warranty made by either Party in this Lease shall at any time prove to be false or misleading in any material respect, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within twenty (20) Business Days after such Party became aware that it was false, incorrect or breached in any material respect (or within such longer period of time, not to exceed three (3) Months, as is necessary for such Party with the exercise of diligence to cure such failure, if such failure is susceptible to being made true but cannot be cured with the exercise of diligence within such twenty (20) Business Day period, and if such Party commences within such twenty (20) Business Day period and thereafter diligently and in good faith prosecutes the curing of such failure) and (ii) such cure removes any adverse effect on the other Party of such fact, circumstance or condition being otherwise than as first represented; or

(c) any failure by either Party to perform any obligation set forth in this Lease (other than obligations that are covered by Section 14.1(a) or (b) as a separate Event of Default) which is not excused by Force Majeure or the other Party’s failure to perform and such failure is not cured within twenty (20) Business Days after written notice thereof is given to such Party by the other Party (or within such longer period of time, not to exceed three (3) Months, as is necessary for such Party with the exercise of diligence to cure such failure, if such failure is susceptible to cure but cannot be cured with the exercise of diligence within such twenty (20) Business Day period, and if such Party commences within such twenty (20) Business Day period and thereafter diligently and in good faith prosecutes the curing of such failure); provided it shall be an Event of Default if Lessor fails to cure a breach of Section 2.2 within five (5) days after receipt of written notice thereof; or

(d) either PSE&G or Lessor (i) becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due; (ii) generally is not paying its debts as they become due; (iii) has a receiver, trustee or custodian appointed for, or to take possession of, all or substantially all of the assets of such Person, either in a proceeding brought by such Person or in a proceeding brought against such Person and such appointment is not discharged or such possession is not terminated within ninety (90) Days after the effective date thereof or such Person consents to or acquiesces in such appointment or possession; or (iv) files a petition for relief under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar Law (collectively, the “Applicable Bankruptcy Law”) or an involuntary petition for relief is filed against such Person under any Applicable Bankruptcy Law and such involuntary

petition is not dismissed within ninety (90) Days after the filing thereof or an order for relief naming such Person is entered under any Applicable Bankruptcy Law or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by such Person.

With respect to any Event of Default, (i) the term “Defaulting Party” means the Party with respect to which such Event of Default has occurred; and (ii) the term “Non-Defaulting Party” means the Party that is not the Defaulting Party with respect to such Event of Default.

#### 14.2. Remedies Upon an Event of Default.

(a) If an Event of Default occurs during the Term, the Non-Defaulting Party may, for so long as the Event of Default is continuing (and so long as it is not the Defaulting Party with respect to any other Event of Default), (i) by written notice to the Defaulting Party establish a date (which date shall be between five and ten Business Days after the Non-Defaulting Party delivers notice) on which this Lease shall terminate (the “Early Termination Date”) and (ii) until the earlier of the Early Termination Date or the date on which such Event of Default has been cured, withhold any payments due and suspend performance of its other obligations in respect of this Lease.

(b) If an Early Termination Date has been designated and such Event of Default shall not have been cured and shall be continuing on the Early Termination Date, then this Lease shall terminate on the Early Termination Date.

(c) If this Lease is terminated on or as of the Early Termination Date and the Defaulting Party is PSE&G, then PSE&G shall perform the Restoration Obligations and Lessor shall be entitled to seek all available legal and equitable remedies.

(d) If this Lease is terminated on or as of the Early Termination Date and the Defaulting Party is Lessor, then PSE&G shall be entitled to seek all available legal and equitable remedies.

(e) If PSE&G is the Non-Defaulting Party, its damages shall include the value of energy, capacity and solar renewable energy certificates (“Lost Energy Damages”) lost as a result of such Event of Default, including for any terminated portion of the Term.

### Article 15. CONDITIONS

15.1. **Conditions.** It is understood and agreed this Lease and the ability of PSE&G to use the Leased Premises for the Solar Facility is expressly contingent upon PSE&G’s or its contractor’s obtaining and maintaining all Permits that may be required by any Governmental Entity, including the New Jersey Board of Public Utilities and any local zoning authority, and a satisfactory engineering review of the Leased Premises (“Engineering Review”). Lessor shall cooperate with PSE&G’s effort to obtain and maintain such Permits and Engineering Review and shall take no action which would likely have a material adverse affect upon the status of the Leased Premises with respect to the Permitted Use or PSE&G’s ability to obtain and maintain such Permits and Engineering Review. PSE&G shall have the right to terminate this Agreement at any time and at no cost or expense if (a) any application for a Permit is finally rejected, (b) any

Permit issued to PSE&G contains an unreasonable term or condition or is canceled or modified in a manner that has an adverse impact on PSE&G, expires, lapses, or is otherwise withdrawn or terminated, (c) PSE&G reasonably determines that such Permit may not be obtained in a timely manner, (d) PSE&G reasonably determines within six months of the Effective Date that any Engineering Review is unsatisfactory, (e) PSE&G reasonably determines that the Leased Premises are no longer technically compatible for its use, or (f) PSE&G determines that it will be unable to use the Leased Premises for the Permitted Use. PSE&G shall deliver a written notice of termination to Lessor and shall be effective upon the mailing of such notice by PSE&G, or upon such later date as designated by PSE&G in such notice. Upon such termination, this Agreement shall be of no further force or effect and all rights, duties and obligations of Lessor and PSE&G under this Agreement shall terminate. Notwithstanding anything to the contrary contained herein, this Lease and the obligations of the Parties hereunder are contingent upon the full execution and delivery by PSE&G and the applicable contractor of a contract for the installation of the Solar Facilities (“Contractor”).

## **Article 16. GENERAL PROVISIONS**

### **16.1. Assignment and Subletting.**

(a) Neither Party shall assign, sublet, delegate or otherwise transfer (collectively, an “Assignment”) this Lease or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, (i) either Party may make an Assignment of this Lease to an Affiliate of such Party, (ii) the Lessor may assign its interest in this Lease to any Person succeeding to all or substantially all of its assets (including the Lessor Property) or to any Person acquiring all or substantially all of its undivided interest in the Lessor Property (including the Leased Premises), (iii) PSE&G may assign its interest in this Lease to any Person succeeding to or acquiring all or substantially all of its photovoltaic system assets; and (iv) either Party may make an Assignment of its interest in this Lease to a Financing Party. In the event of a sale or other transfer of the Lessor Property to any Person (other than a Financing Party), Lessor shall simultaneously make an Assignment of this Lease to such Person pursuant to Section 16.1(a)(ii). Any assignee of all or any portion of a Party’s interest hereunder (other than a Financing Party, but including any Person succeeding to such Party’s interest hereunder as a result of foreclosure or other exercise of remedies by such Financing Party) shall assume and agree in writing to perform all of the obligations of its assignor accrued and unperformed as of the effective date of such Assignment and arising hereunder after the effective date of such Assignment. No Assignment of all or any portion of a Party’s interest under this Lease shall relieve such Party from obligations or liability hereunder, except that if no Event of Default or event which, with the giving of notice or the lapse of time or both, would become such an Event of Default with respect to the assigning Party shall have occurred and be continuing, an Assignment pursuant to Section 16.1(a)(ii) or Section 16.1(a)(iii) shall relieve the assigning Party of any obligation or liability hereunder upon the effective date of the Assignment, without the need for consent from the other Party; *provided* in each case that the assignee has assumed the obligations of the assigning Party as provided in the preceding sentence. Any Party making an Assignment pursuant to this Section 16.1 shall promptly notify the other Party thereof and furnish such Party a copy

of such Assignment. Nothing contained herein shall prevent a Party from designating Representatives to act on its behalf hereunder, but a Party shall be fully responsible for the acts or omissions of its Representatives.

(b) This Lease shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(c) Notwithstanding the foregoing provisions of this Section, neither party shall be permitted to assign or transfer its interest herein to any party that is, or of which any partners, officers, directors, members or shareholders are, (a) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury, pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and all applicable provisions of Title III of the USA PATRIOT Act, Public Law No. 107-56 (October 26, 2001); (b) listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (c) listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (d) listed on any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; or (e) listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by any governmental authority. Any purported assignment of this Lease inconsistent with this Section shall be void ab initio.

**16.2. Notices and Consents.** All notices, requests, demands, claims, consents and other communications or deliveries hereunder shall be in writing and (a) delivered in person or by courier, (b) sent by a reputable overnight delivery service, or (c) mailed certified first class mail, postage prepaid, return receipt requested, to the appropriate party at the following addresses:

if to Lessor:

With copy to:

If to PSE&G: PSE&G  
80 Park Plaza, T-8  
Newark NJ 07102  
Attn: "Solar 4 All" Project Manager

with copy to: PSE&G  
80 Park Plaza, T-4  
Newark, NJ 07102  
Attention: Corporate Secretary

or such other address as a Party may designate to the other Party by notice given as provided herein. Such notices shall be effective (i) if delivered in person or by courier, upon actual receipt by the intended recipient, (ii) if sent by overnight delivery or mailed, upon the date of delivery or refusal thereof as shown by the confirmation statement or return receipt therefor.

16.3. **Integration; Amendment.** This Lease constitutes the entire agreement of the Parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained herein. This Lease supersedes all prior communications, representations, or agreements, oral or written, among the Parties relating to the subject matter hereof. This Lease may not be amended except in writing signed by the Parties.

16.4. **Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Lease, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16.5. **Governing Law; Venue and Jurisdiction; Waiver of Jury Trial.**

(a) This Lease shall be subject to and governed by the Law of the State of New Jersey, without giving effect to principles of conflicts of Law.

(b) The federal district and state courts located in New Jersey shall have non-exclusive jurisdiction in any suit, action or other legal proceeding arising out of or relating to this Lease or the transactions contemplated hereby. Each Party hereby irrevocably and unconditionally (i) submits to the nonexclusive jurisdiction of such courts; and (ii) waives, to the fullest extent permitted by applicable Law, (A) any objection it may now or hereafter have to the laying of venue of any such suit, action or other legal proceeding in any such court, and (B) any objection that such courts are an inconvenient forum, and (iii) consents to service of process in any such suit, action or proceeding in any manner permitted by applicable Law.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16.6. **Multiple Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and it will not be necessary in making proof of this Lease or the terms of this Lease to produce or account for more than one of such counterparts, *provided* that the counterpart produced bears the signature of the Party sought to be bound.

16.7. **Effect of Termination.** If this Lease is terminated, this Lease shall become void and of no further force or effect (except for the provisions of Sections 5.5 and 12.2 and Articles 13, 14 and 16, all of which shall survive such termination and continue in full force and effect); *provided, however:*

(a) such termination shall not relieve any Party from any liability for breach of this Lease arising prior to such termination; and

(b) if either Party owes any amount to the other Party at the time this Lease is so terminated (regardless of whether such first Party is in breach of this Lease), such first

Party shall pay such amount to such second Party within five Business Days of such termination.

16.8. **Memorandum of Lease.** The Parties agree to record with the appropriate land record offices a memorandum of lease substantially similar to Exhibit B containing a summary of the essential terms and conditions of this Surface Lease.

16.9. **Subordination.** Lessor represents and warrants the Lessor Property is not currently subject to any mortgage or ground lease. Lessor shall use its best efforts to obtain a subordination agreement with regard to any subsequent mortgage or ground lease in the form attached hereto as Exhibit E or otherwise in form and substance reasonably satisfactory to PSE&G (“Subordination Agreement”) prior to placing any such new mortgage or ground lease on the Leased Premises, but, in any case, Lessor shall fully disclose the terms of this Lease to such prospective mortgagee or ground lessor and this Lease shall be and remain a superior encumbrance unless and until a Subordination Agreement is fully executed and delivered.

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Executed by the Parties as of the Effective Date.

LESSOR: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**LEASED PREMISES**

All of the real property in Block \_\_\_\_\_, Lot \_\_\_\_\_ in the municipality of \_\_\_\_\_ described within the boundaries designated "Leased Premises" in \_\_\_\_\_

In addition, the Leased Premises also include:

- A. Construction Lay-Down. An exclusive leasehold interest in the Lessor Property located \_\_\_\_\_ for use by PSE&G to temporarily stage, lay-down and store materials and equipment for the use of PSE&G, its employees, agents, contractors and their employees, including parking, in connection with the Work.
  
- B. Interconnection. An exclusive leasehold interest in the Lessor Property necessary to (a) install, maintain and operate an electrical conduit from the Solar Facilities to the point of interconnection at \_\_\_\_\_, and (b) install a new switchgear/meter enclosure and related ancillary equipment.
  
- C. Access. A non-exclusive, general right of access over existing vehicular and pedestrian access roads and areas as are reasonably necessary and appropriate for use by PSE&G and its Representatives for vehicular and pedestrian ingress to and egress from the Leased Premises in connection with conducting the Work and any other use permitted under the Lease. Emergency access will be allowed at all times. Otherwise, routine construction, operation and maintenance will be allowed with 24 hours notice.

**EXHIBIT B**

**MEMORANDUM OF LEASE AGREEMENT**

A written Surface Lease has been executed between the parties named in this Memorandum of Lease, and the following is given with respect to said Surface Lease:

NAME OF GRANTOR/LESSOR:

ADDRESS OF GRANTOR/LESSOR:

NAME OF GRANTEE/LESSEE:

ADDRESS OF GRANTEE/LESSEE:           80 Park Plaza, Newark, NJ 07102

DATE OF SURFACE LEASE:

TERM OF SURFACE LEASE:       Beginning on Effective Date and extending for a term of twenty (20) years from the date of Commercial Operation of the Solar Facilities.

This Memorandum is intended for recording purposes only and does not modify, supersede, diminish, add to or change all or any of the provisions of the Surface Lease in any respect, and the provisions set forth in the Surface Lease shall prevail.

DESCRIPTION OF PROPERTY SET FORTH IN SAID LEASE AGREEMENT:

The Premises are described on "Exhibit A" attached hereto and made a part hereof.

IN WITNESS WHEREOF, the Grantor has hereunto set their hands and seals and the Grantee has caused this Memorandum of Lease Agreement to be signed in its corporate name and has caused to be affixed hereunto the common and corporate seal of the said corporation on the day and year first above written.

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
LESSOR

**EXHIBIT C**

**Permitted Encumbrances**

## **EXHIBIT D**

### **Insurance**

#### **I. Insurance Requirements for Lessor:**

1. Lessor agrees to provide the following insurance coverages at its own expense that will cover any personal injuries or accidents that may occur as a direct result of the activities conducted by Lessor (including any activities of Lessor's employees, consultants, contractors or other agents) on the Lessor's premises:

a. Commercial General Liability insurance on an "occurrence" basis, including coverage for bodily injury and death, personal injury, property damage, contractual liability, and products and completed operations with limits as follows; \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

b. Workers' Compensation and Employer's Liability insurance with limits as follows; workers' compensation – statutory, employer's liability - \$1,000,000 each accident and in the aggregate.

c. Umbrella/Excess Liability insurance of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Such coverage shall be on a per occurrence basis and be over and above coverage provided by the policies described in paragraphs a, Commercial General Liability, and b, Employer's Liability above.

d. Pollution/Environmental Liability insurance with limits of at least \$2,000,000 per occurrence (particularly applicable to the provisions of Section 13 of this Agreement).

e. All Risk Property insurance covering the repair and/or replacement cost of Lessor's property on the Lessor's premises as defined in this Agreement. This insurance would exclude PSE&G property including the solar electric generating facility as defined in this Agreement.

2. PSE&G shall be included as an additional insured under the coverage outlined in paragraphs 1. a, c, and d above.

3. Lessor shall provide a certificate of insurance executed by an authorized representative of Lessor's insurer as evidence of its compliance with the requirements of paragraphs 1 and 2 above. Lessor's insurer will provide PSE&G with thirty (30) days prior written notice of any cancellation, changes or modifications to said insurance.

#### **II. Insurance Requirements for PSE&G:**

1. PSE&G shall maintain for the duration of this Lease insurance against claims for injuries to persons and/or damage to property which may arise from or in connection with the performance of work hereunder by PSE&G, its agents, representatives, employees, contractors or subcontractors. Prior to commencing work at the site, PSE&G shall provide the Lessor with a

Certificate of Insurance or Self-Insurance, signed by a person authorized by the insurer or PSE&G to bind coverage on its behalf. The Certificate of Insurance shall be delivered to the Lessor before work commences at the Premises.

2. PSE&G has the right to self-insure any of the coverages set forth above or to provide such coverages through insurance provided by PSE&G's contractors. If actual insurance policies are maintained in lieu of PSE&G's self-insurance, the Lessor is to be added as an additional insured only as their interest may appear on all Certificates of Insurance associated with this contract.

Minimum Scope and Limits of PSE&G's Insurance

A. Comprehensive General Liability Insurance including Completed Operations Coverage, covering bodily injury, personal injury and property damage. Limits of Liability shall not be less than \$1,000,000 Occurrence and \$2,000,000 policy aggregate. The General Liability Insurance must include coverage for XCU (Explosion, Collapse and Underground).

B. Workers' Compensation and Employers Liability Insurance as required by the State of New Jersey.

C. Commercial Automobile Liability Insurance, with limits of liability not less than \$1,000,000 Combined Single Limit.

D. Umbrella Liability Insurance with limits of liability not less than \$4,000,000.

E. Builders Risk Insurance

**EXHIBIT E**

**Form of Subordination Agreement**

Date: \_\_\_\_\_

Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lessor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property: \_\_\_\_\_

Mortgage: \_\_\_\_\_

Lease: \_\_\_\_\_

Premises: \_\_\_\_\_

In consideration of the mutual agreements made herein, Lender and Lessee agree:

1. Consent. Lender acknowledges receipt of a complete and accurate copy of the Lease and hereby consents to the Lease and all of the terms and provisions thereof.
  
2. Subordination. The Lease is subject and subordinate to the Mortgage and to all advances now or hereafter made thereunder or any modifications, amendments and extensions thereto, with the same force and effect as if the Mortgage had been executed, delivered, recorded, and all advances had been made thereunder, prior to execution and delivery of the Lease, and to all amendments, replacements, renewals, consolidations and extensions thereof, whether securing the same principal amount or otherwise.
  
3. Non-disturbance. Provided the Lease is in effect and Lessee is not then in default thereunder beyond applicable cure periods, then, in the event of foreclosure of the Mortgage or Lender's acceptance of a deed in lieu of foreclosure:
  - a. the Lease shall continue in full force and effect and Lessee's possession of the Premises shall not be disturbed by Lender;
  
  - b. Lender will not name Lessee as a party in any action or proceeding to foreclose the Mortgage or to exercise any of its other rights under the Mortgage or under law; and

c. any sale of the property pursuant to foreclosure or otherwise will be subject to all of Lessee's rights under the Lease.

4. Attornment. If Lender succeeds to the rights of Lessor under the Lease, whether by foreclosure, deed in lieu of foreclosure or otherwise, Lessee will attorn to Lender, and Lender will accept such attornment, for the unexpired term of the Lease, subject to all of the terms of the Lease; provided, however:

a. Lender shall not be bound by the payment to Lessor of rent farther in advance than as permitted or required under the Lease;

b. Lender shall not be liable for any act or omission of Lessor, or for any fact, circumstance or condition existing or arising prior to Lender's succession in interest to Lessor, except if Lender received notice of same pursuant hereto;

c. Lender shall not be subject to any offsets, claims or defenses Lessee might have against Lessor, except if Lender received notice of same pursuant hereto; and

d. if the Lease is not terminated following a casualty or condemnation, then upon the request of either Lessor or Lessee, Lender shall permit the use of any insurance proceeds or eminent domain awards for repair and restoration.

5. Notice and Cure. Notwithstanding any provision of the Lease to the contrary, Lessee agrees to deliver to Lender, in the manner set forth in Paragraph 10 hereof, a copy of any notice of default sent to Lessor by Lessee whenever Lessee shall give any such notice of default to Lessor; provided Lessee's failure to do so shall not affect the effectiveness of such notice as to Lessor. Lender shall have the right, but not the obligation, to cure such default within the time periods allowed Lessor under the Lease, provided such periods shall run from the date Lessor receives notice pursuant hereto.

6. Payment of Rent to Lender. If in the future there is a default by Lessor in the performance and observance of the terms of the Mortgage, Lender may, at its option, require all rents and all other payments due under the Lease be paid directly to Lender. Upon notification to that effect by Lender to Lessee, Lessor HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS Lessee and Lessee agrees to pay any payments due under the terms of the Lease to Lender. Such payments shall constitute payments under the terms of the Lease and Lessor shall have no claim against Lessee by reason of such payments made to Lender, nor shall Lessee be obligated to inquire as to the existence of any default or the right of Lender to make such request.

7. Further Assurances. The subordination provision hereof is effective upon execution hereof and the non-disturbance and attornment provisions hereof shall operate immediately upon Lender's succeeding to the interest of Lessor in the Premises without execution of any further instrument. Lender and Lessee agree, however, to execute and deliver from time to time such further documents as either party reasonably deems necessary or appropriate to evidence their agreement hereunder.

8. Lessee's Property. Lender hereby expressly waives any interest in the Solar Facility and any equipment, trade fixtures or other personal property now or hereafter located on or affixed to

the Premises or any portion thereof regardless of the manner in which same is attached or affixed to the Premises, agrees the same does not constitute fixtures or realty and acknowledges Lessee is authorized to remove same.

9. Successors and Assigns. The term “Lender”, as used herein, unless the context requires otherwise, shall include the successors and assigns of Lender and any persons or entity that shall become the owner of the Property by reason of a foreclosure of the Mortgage or an acceptance of a deed or an assignment in lieu of foreclosure or otherwise. The terms “Lessor” and “Lessee” as used herein shall include their respective successors and assigns.

10. Notices. All notices given hereunder shall be in writing and shall be deemed received at the earlier of when delivered (or delivery is refused) in hand or by overnight courier for which a receipt of delivery is given, by certified or registered mail, return receipt requested, addressed to Lessee and Lender at the addresses appearing on the first page hereof, or to such other address or addresses as the parties may from time to time specify by written notice so given.

11. Governing Law. This Agreement shall be interpreted in accordance with and governed by the law of the State of New Jersey

12. Changes in Writing. This Agreement may not be changed, waived, or terminated except in a writing signed by the party against whom enforcement of the change, waiver, or termination is sought.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed under seal as of the date first above written.

LENDER:

By: \_\_\_\_\_

Name:

Title:

LESSOR:

By: \_\_\_\_\_

Name:

Title:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: \_\_\_\_\_

Name:

Title:

# **EXHIBIT E**

**Contract Id No. SCM-2012-\_\_\_\_\_**

**PROPRIETARY AND CONFIDENTIAL**

**TURNKEY, LUMP-SUM ENGINEERING, PROCUREMENT AND CONSTRUCTION  
CONTRACT FOR A SOLAR PHOTOVOLTAIC PROJECT**

Dated as of \_\_\_\_\_ 2012

between

Public Service Electric and Gas Company

and

\_\_\_\_\_

This Turnkey, Lump-Sum, Engineering, Procurement, and Construction EPC Contract for a Solar Photovoltaic Project (the "EPC Contract"), dated as of \_\_\_\_\_ 2012 is by and between Public Service Electric and Gas Company, a New Jersey corporation (the "Company"), and \_\_\_\_\_, a \_\_\_\_\_ (the "EPC Contractor"), collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Company desires to have constructed and placed into operation one solar photovoltaic electric generating system and related ancillary equipment (the "Project") capable of producing approximately [\_\_\_\_\_] megawatts (dc) of electrical power in accordance with this EPC Contract; and

**WHEREAS**, the Company desires the EPC Contractor to build the Project at \_\_\_\_\_ (the "Site Location"), as further identified in Exhibit F, which is currently owned or leased by \_\_\_\_\_ (the "Host"); and

**WHEREAS**, the EPC Contractor, itself or through qualified Subcontractors, is prepared to provide all that is necessary for the engineering, design, procurement, project management, construction, testing, start-up and commissioning the Project in accordance with and subject to the terms and conditions set forth in this agreement;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **EPC Contract Documents**. This EPC Contract includes the documents listed below, together with any other documents referenced therein, including, but not limited to, Exhibits and Attachments, which as a whole, constitute the entire agreement between the Parties, all of which form one integrated agreement and arrangement for the EPC Contract:

1. Part I – EPC Contactor’s Scope of Work
2. Part II - EPC Contract Terms and Conditions

2. **Order of Precedence**. The Parts and all components of this EPC Contract are to be considered complimentary and what is required by one will be binding as if required by all. If there is a conflict between Parts I and II of this EPC Contract, the provisions of Part II will govern. In the event of a conflict within either Parts I or II, or within any of the components thereof, the most stringent requirement will take precedence, except as may be otherwise determined by Company.

3. **Headings**. The table of contents and article, section, exhibit and attachment, titles and headings are inserted for convenience only and shall not be used for the purposes or interpreting this EPC Contract.

4. **Plural and Singular.** Words importing the singular also include the plural and vice versa.

5. **Without Limitation.** The words “include” and “including” are not words of limitation and shall be deemed to be followed by the words “but not limited to.”

6. **Reference to EPC Contract.** The words “herein”, “hereof,” or “hereunder” or similar terms refer to this EPC Contract as a whole and not to any specific article or section.

7. **Entire Agreement.** This EPC Contract constitutes the full, complete and only agreement between the Parties with respect to the Work. This EPC Contract supersedes any course of performance, course of dealings, usage of trade, previous agreements, representations, understandings, either oral or written between the Parties and their affiliates. No terms, conditions, agreements, representations, understandings, course of performance, course of dealing, or usage of trade purporting to modify, vary, supplement, explain, or amend any provisions of this EPC Contract shall be effective unless in writing, in the form of a Change Order executed by either the Company or by both the Company and the EPC Contractor. If any part of this EPC Contract is determined to be judicially unenforceable for any reason, the remainder of this EPC Contract shall remain in full force and effect.

8. **Mutual Representations and Warranties.** The EPC Contractor and Company hereby represent and warrant that:

- 8.1 it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and is qualified to do business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, and has all requisite legal power and authority to carry on its business and to execute this Contract and to perform the terms, conditions and provisions hereof;
- 8.2 the execution, delivery and performance of this Contract have been duly authorized by all requisite corporate action;
- 8.3 this Contract constitutes the legal, valid and binding obligation of it, enforceable in accordance with the terms hereof including those relating to the payment of Liquidated Damages;
- 8.4 neither the execution nor delivery nor performance by it of this Contract nor the consummation of the transactions contemplated hereby will result in (a) the violation of, or a conflict with, any provision of the organizational documents of it; (b) the contravention or breach of, or a default under, any term or provision of any indenture, contract, agreement or instrument to which it is a party or by which it or its property may be bound; or (c) the violation by it of any applicable Law; and
- 8.5 there is no action, suit or proceeding now pending or (to the best of its knowledge) threatened against it (or any Subcontractor, in the case of the Contractor) before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect the ability of such Party (or any

Subcontractor, in the case of the Contractor) to perform its obligations hereunder (or under any Subcontract).

9. **Condition Precedent.** Notwithstanding any other provision contained in this Contract, it shall be a condition precedent to the effectiveness of this Contract that the Company shall have executed a satisfactory [Lease] Agreement with the Host. The Company shall promptly advise the EPC Contractor in writing of the execution of such Agreement, which is expected to occur on or about [\_\_\_\_\_], 2012.

10. **Counterparts; Facsimile and Scanned Signatures.** This Agreement may be executed and delivered by facsimile or electronically scanned signature and in several counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this EPC Contract to be executed by their authorized representatives as of the date first above written.

<p>_____ [EPC Contractor]</p> <p>By: _____ Name: Title:</p>	<p>Public Service Electric and Gas Company</p> <p>By: _____ Name: Title:</p>
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**PART I**

**PSE&G Solar 4 All**

**EPC Contractor's Scope of Work**

**PART II**

**EPC CONTRACT TERMS AND CONDITIONS**

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- Exhibit I - Affidavit of Payment and Partial Release of Claims
- Exhibit J - Certificate of Substantial Completion
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- Exhibit M - System Performance Test Procedures
- Exhibit N - Permit Responsibility Matrix
- Exhibit O - Land Use Agreement
- Exhibit P - Workmanship LC
- Exhibit Q - EPC Contractor Insurance

## **ARTICLE 1. INTENT**

1. It is the intent of the Parties that the EPC Contractor engineer, design, procure, project manage, construct, test, start-up and commission the Project in accordance with this EPC Contract. The EPC Contractor shall perform all of the work specified or implied by this EPC Contract in order to accomplish the intent of the Parties. The EPC Contractor's performance under this EPC Contract shall include everything requisite and necessary to complete the entire Project notwithstanding the fact that every item necessarily involved may not be specifically mentioned. Notwithstanding the foregoing, work not indicated herein shall be adequately and properly performed by the EPC Contractor at no extra cost if such work is necessary to complete the Project. The objective of this EPC Contract is to relieve the Company of the necessity of engaging or supplying any labor, service or material to complete the Project unless expressly stated herein as being furnished by the Company. The EPC Contractor acknowledges that it has the experience and expertise to perform the EPC Contract, which is a material inducement to the Company for entering into this EPC Contract.

## **ARTICLE 2. DEFINITIONS**

The following definitions shall apply herein:

**“Antiquity”** means any man-made object, fossil, human remains, or evidence of human burials, which has a reasonable likelihood of being determined by any Governmental Authority to be of historical value and require preservation.

**“As-Built Drawings”** means the final corrected and redrawn drawings or documents that reflect the Work performed, Materials installed and the actual Project as constructed, which have been certified or sealed by a duly licensed professional engineer. EPC Contractor shall provide As-Built Drawings in CAD format upon request.

**“Certificate of Final Acceptance”** means a certificate issued by the EPC Contractor and accepted by the Company in accordance with Article 7, substantially in the form attached hereto as Exhibit K, which shall evidence Company's acknowledgement that Final Acceptance has occurred.

**“Certificate of Substantial Completion”** means a certificate issued by the EPC Contractor and accepted by the Company in accordance with Article 6, substantially in the form attached hereto as Exhibit J, which shall evidence Company's acknowledgement that Substantial Completion has occurred.

**“Change”** means a Time Change or a Price Change.

**“Change in Law”** means the adoption, enactment, amendment or change in Law applicable to the Project after the date of this EPC Contract which, at the time of the Change in Law, has a material impact on the cost of the Work or the Project Schedule critical path. Notwithstanding the foregoing, the following shall not be considered a Change In Law: the adoption, enactment, amendment or change in Law (a) by a Municipality, (b) with respect to (i) taxes or levies assessed on the EPC Contractor's income, profits, revenues, or gross receipts, or (ii) taxes, levies or withholdings that vary the compensation, benefits, or amounts to be paid to or

on behalf, on account of the employees of EPC Contractor or any Subcontractor or (c) any change in a Permit caused by the acts or omissions of any EPC Contractor Person.

**“Change Order”** is a written order executed by the Company pursuant to Article 31 authorizing a Change or other modification of this EPC Contract.

**“Change Request”** is a document, substantially in the form of Exhibit A, prepared by the EPC Contractor as a proposal for a Change.

**“Change Trigger Event”** is (a) a Change in Law, (b) Suspension by Company, (c) Company Directed Change; (d) Termination for Convenience; and (e) the occurrence of a Force Majeure Excused Event.

**“Claim”** means any claim, allegation, action, suit or proceeding (regardless of merit) asserted by any Person.

**“Company”** is Public Service Electric and Gas Company.

**“Company Permit”** means each and every permit identified as a Company responsibility in Exhibit N.

**“Company Person”** means Company and its agents, representatives, contractors, vendors, subsidiaries, direct and indirect owners and affiliates (and any successor or assignee of any of the foregoing Persons) to the extent the foregoing Persons or entities are not the EPC Contractor Persons.

**“Company Directed Change”** is defined in Article 30.

**“Construction Manager”** is defined in the Scope.

**“Cure Period”** is defined in Article 6.

**“Day”** means a calendar day including any Saturday, Sunday and holiday.

**“Deadline”** means the Guaranteed Substantial Completion Date or the Guaranteed Final Acceptance Date, as the case may be.

**“Delay Liquidated Damages”** is defined in Article 8.

**“Delayed Payment Rate”** means five (5) percent per annum.

**“Eligible Bank”** means any bank or financial institution reasonably acceptable to the Company which has the Required Rating.

**“Emergency Entities”** is defined in Article 18.

**“EPC Contract”** means this Turnkey, Lump-Sum Engineering, Procurement and Construction Contract between the Company and the EPC Contractor and all the Exhibits and Appendices hereto.

**“EPC Contract Price”** is defined in Article 58 of the EPC Contract.

**“EPC Contractor”** is defined in the first sentence of this EPC Contract.

**“EPC Contractor Event of Default”** shall have the meaning ascribed thereto in Article 42.

**“EPC Contractor Land Use Agreements”** means any contractual rights obtained by the EPC Contractor to use real property in connection with the construction of the Project.

**“EPC Contractor Permits”** means each and every permit identified as an EPC Contractor responsibility in Exhibit N.

**“EPC Contractor Taxes”** is defined in Article 59.

**“EPC Contractor Person”** means the EPC Contractor, any subsidiary, affiliate, agent, successor or assignee of the EPC Contractor, or any Subcontractor.

**“Equipment NTP”** means the written notice from the Company directing the EPC Contractor to commence the purchase of solar panels, inverters, racking systems and other long-lead time items.

**“Final Acceptance”** is defined in Article 7.

**“Final Acceptance Date”** means the date on which Final Acceptance occurs.

**“Financing Party”** means any Person providing financing to Company including any trustee or agent representing any such Person.

**“Force Majeure Excused Event”** is defined in Article 42.

**“Governmental Authority”** means the governmental and municipal authorities of the United States or any state therein or any department, subdivision (political or otherwise), municipality, instrumentality, county, agency, corporation or commission under the direct or indirect control thereof.

**“Guaranteed Final Acceptance Date”** is defined in Article 8.

**“Guaranteed Substantial Completion Date”** is defined in Article 8.

**“Guarantees”** means the Deadlines and the Performance Guarantees.

**“Hazardous Material”** means any chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as pollutants or contaminants under any Law.

**“Host”** is either (i) the owner of Site or (ii) the owner or tenant of the building and/or real property upon which the Project is to be located, as identified in the Recitals.

**“Insured Parties”** is defined in Article 17.

**“Land Use Agreements”** means (a) the [lease/lease agreement] between PSE&G and Host dated \_\_\_\_\_, 2012 (a [draft] copy of which is attached hereto as Exhibit O); (b) such other legal or contractual rights obtained by the Company (if any) to use real property or the rooftop of the building located on the Site in connection with the construction of the Project; and (c) any encumbrance, easement, license, restriction, or limitation of any kind applicable to the Site.

**“Law”** means (a) any constitution, charter, act, statute, law, ordinance, rule, regulation, order, legislative or administrative action of any Governmental Authority applicable to either party or the Work; (b) any final decree, judgment or order of a court; and (c) any Permit, code or standard of any Governmental Authority applicable to the Project.

**“Lien”** means any lien, notice of lien, Claim, charge, security interest, defect in title, attachment or encumbrance including materialman’s, laborer’s, mechanic’s, subcontractor’s and vendor’s liens.

**“Liquidated Damages”** are the Performance Liquidated Damages and the Delay Liquidated Damages.

**“Loss”** means any liability, loss, damage, fine, judgment, penalty, fee, cost, or expense (including reasonable attorney’s fees).

**“Major Equipment Vendors”** means the supplier or vendor that provides or supplies solar panel modules, inverters, racking systems, transformers, switchgear and monitoring equipment for the project.

**“Materials”** means any articles, apparatus, goods, materials, products, items, data, documents, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished or installed by any EPC Contractor Person as part of the Project.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“Milestone Payment”** means a payment to the EPC Contractor by Company of a portion of the EPC Contract Price for the Work.

**“Milestone Payment Schedule”** means the milestone payment schedule set forth in Exhibit B.

**“Municipality”** means any village, borough, township, town or city located in New Jersey.

**“Notice of Claim”** means a written notice from the Company to the EPC Contractor of any claim or demand indemnifiable under this EPC Contract. The Notice of Claim shall include details sufficient to apprise the EPC Contractor of the circumstances surrounding the claim or demand.

**“NTP Date”** means the date upon which the Company directs in writing the EPC Contractor to commence Work.

**“Payment Application”** is set forth in Exhibit C.

**“Performance LC”** means the irrevocable standby letter of credit in substantially the form of Exhibit G.

**“Performance Liquidated Damages”** are the liquidated damages referred to in Article 9.

**“Permit”** means any permit, approval, license, consent, variance, notification or authorization required by any Governmental Authority in connection with the Work or the Project.

**“Person”** means any individual, entity, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

**“Price Change”** is the actual, verifiable incremental increase or decrease in costs reasonably and prudently incurred as a direct result of a Change Trigger Event. The EPC Contractor’s compensation for performing the Work as the result of a Change Trigger Event shall not exceed the EPC Contractor’s direct cost plus five percent (5%) to cover indirect costs, fees, overhead, and profit.

**“Project Schedule”** is defined in the Scope.

**“Punch List”** means a list of uncompleted Work.

**“Required Rating”** means, with respect to any Person, that such Person’s non-credited enhanced long-term senior unsecured debt is rated at least A3 by Moody’s or A- by S&P.

**“Retainage”** means the funds withheld by Company from the payment of the Contract Price (and/or available under the Retainage LC) which may be applied, if necessary, by Company towards completion of the Work or in satisfaction of any of the EPC Contractor’s other obligations hereunder and, with respect to any Milestone Payment, shall be an amount equal to ten (10%) percent of such Milestone Payment.

**“Retainage LC”** means the irrevocable standby letter of credit in substantially the form of Exhibit D.

**“S&P”** means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

**“Site”** means the physical location where the Project is to be built, which includes the Host’s building if the Project is a rooftop installation..

**“Scope”** is set forth as Part I.

**“Specifications and Drawings”** means the specifications and drawings prepared by the EPC Contractor with regard to the Work in the manner required by this EPC Contract.

**“Standard Test Conditions”** means the conditions at which the photovoltaic (PV) modules comprising the Project are tested to determine the module nominal power output and performance characteristics. The Standard Test Conditions are defined to be 1000 W/m<sup>2</sup>, a relative air mass of 1.5, and 25°C cell temperature.

**“Subcontractor”** means any Person, such a subcontractor, vendor or supplier of any tier that provides any part of the Work for the EPC Contractor.

**“Substantial Completion”** shall have the meaning ascribed thereto in Article 8.

**“Substantial Completion Date”** means the date on which Substantial Completion occurs.

**“System Performance Guarantees”** are defined in Article 9.

**“System Performance Test”** means the test(s) conducted in accordance with the Scope of Work and Exhibit M in order to determine whether the Project has achieved Substantial Completion.

**“Time Change”** is the extension or reduction in a Deadline necessitated by a Change Trigger Event because such Change Trigger Event has made the achievement of such Deadline impossible or more easily achievable, as the case may be, except to the extent due to EPC Contractor’s act, omission, negligence, breach of this EPC Contract, or failure to take adequate measures to mitigate or alleviate the impact or effect of such Change Trigger Event. No Time Change shall be in excess of the minimum period necessary to overcome the effects of the Change Trigger Event in question.

**“Work”** means any labor, supervision, technical advice, work direction, design, testing, inspection, engineering, services (including, without limitation, planning and preparation, training, materials management, disposal, or remediation) or Materials or other item or service of any type necessary or desirable for the design, engineering, procurement, construction, testing, start up and commissioning the Project in accordance herewith

**“Workmanship LC”** means the irrevocable standby letter of credit in substantially the form of Exhibit P.

### **ARTICLE 3. AGREEMENT**

**1.** The Company objects to any different or additional terms and conditions other than those contained in this EPC Contract. This EPC Contract is expressly conditioned on the EPC Contractor’s assent to the terms and conditions stated herein.

**2.** This EPC Contract is divided into articles, sections and paragraphs, which are titled and numbered for convenience only. It is not to be inferred that this is a complete or correct segregation of the several divisions of Work to be performed. The Company shall not be

liable for omission or duplication of items of Work by the EPC Contractor or any Subcontractor, as a result of real or alleged error in arrangement of matter in this EPC Contract.

3. Should the EPC Contractor find any error, omission, inconsistency, ambiguity, or other discrepancy in this EPC Contract, the EPC Contractor shall provide written notice to the Company within three (3) Days of such discovery. The EPC Contractor represents that prior to submitting any bid or proposal for the Work, it received and carefully read and compared all parts of this EPC Contract and found them to be complete, accurate, consistent, and appropriate for the Work. THE COMPANY MAKES NO REPRESENTATION AND DISCLAIMS ANY GUARANTEE OR WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, REGARDING THE CONTENTS OR ARRANGEMENT OF THIS EPC CONTRACT. The EPC Contractor shall be under a continuing duty to read carefully and compare the parts of this EPC Contract.

4. The Company shall have the right to issue written clarifications to this EPC Contract. Under no circumstances shall Company be liable for any oral clarifications, instructions, or interpretations.

#### **ARTICLE 4. STANDARDS**

1. The EPC Contractor shall provide all Work in strict accordance with this EPC Contract with a high degree of care, skill, diligence, professional knowledge, judgment and expertise, according to sound work practices and accepted professional and industry standards commonly used by reputable professional engineering and construction firms performing engineering and construction services in the United States solar industry for facilities of the type and size similar to the Project, in a well-managed, organized and efficient manner and to the entire satisfaction of the Company. All Work provided by the EPC Contractor shall be subject to review and comment by the Company.

2. The EPC Contractor shall be responsible for the professional design, engineering, construction and construction management of the Work, and shall provide to Company professional engineering certifications to the extent required by any applicable Law. Any omissions from this EPC Contract of design, services or equipment shall not relieve the EPC Contractor from furnishing such design, services or equipment if such are required in order to furnish a complete, operable, safe and reliable Project capable of performing as required hereunder and no change, addition or deletion in design, services or Materials resulting from any such omission shall constitute a basis for a Change.

3. Unless otherwise expressly specified herein, all Material provided hereunder shall be of new manufacture, tested and installed in part and in whole, in accordance with (a) the last applicable published and other recognized codes, specifications and standards, (b) the Permits, and (c) Land Use Agreements that apply to this EPC Contract.

4. The EPC Contractor shall (a) perform the Work (including the engineering, design and construction of the Project) and all Materials furnished hereunder, in compliance with the requirements of this EPC Contract and all applicable Law; (b) provide all necessary code stamps, nameplates, tests, inspections and certifications required by the EPC

Contract and all applicable Law; and (c) perform the Work such that the Project will fully comply with and be capable of operation in accordance with the requirements of this EPC Contract and all applicable Law.

#### **ARTICLE 5. EPC CONTRACTOR RESPONSIBILITIES**

The EPC Contractor shall, at its own expense, do everything necessary to complete the Work including but not limited to:

1. perform all Work continuously and diligently in accordance with all applicable Law, Permits, existing structural or roof warranties (if any) applicable to the Host's building, and the Project Schedule;
2. provide any information that the Company may reasonably request to verify actual progress and predict future progress of the Work;
3. provide specifications, plans, engineering and design of the Project, which shall be consistent with the design and equipment parameters set forth in this EPC Contract, existing structural or roof warranties (if any) applicable to the Host's building, and applicable Law and perform the Work in accordance with such standards, specifications, engineering, design and construction requirements;
4. procure and supply all Materials (unless expressly specified otherwise herein), supplies and services for the Project and the engineering, design, construction, commissioning and testing thereof, all in accordance with this EPC Contract;
5. provide or obtain all utilities necessary for the construction of the Project;
6. deliver to the Company copies of all executed contracts with Subcontractors;
7. deliver to the Company for the Company's approval, at least thirty (30) Days before commissioning occurs, the EPC Contractor's proposed commissioning procedures for the Project;
8. provide all services and Materials for the execution of the Work;
9. provide all construction tools and equipment, other tools, office facilities, telecommunications and other items required to complete the Project and achieve Final Acceptance;
10. clear and inspect the Site (and the roof of the building for rooftop installations), dispose of all debris and fill at its own expense, and construct the Project, including all civil, electrical, mechanical, and controls, works, foundations, and structures;
11. transport to the Site, receive, unload, store and secure at the Site, all Materials and other components of the Work;

12. obtain and maintain all the EPC Contractor Permits;
13. provide all necessary technical support and timely prepare all documentation and the application (including engineering and design information) related to the Work required by the Company in order for the Company to obtain and maintain the Company Permits and the Land Use Agreements consistent with the Project Schedule;
14. provide all other services that are specified in, or may be reasonably inferred from, this EPC Contract;
15. provide to the Company a list of recommended spare parts for the Project;
16. give the Company ten (10) Days' prior written notice before the commencement of any Performance Test;
17. comply with all applicable interconnection requirements, Land Use Agreements, and EPC Contractor Land Use Agreements (if any);
18. prepare monthly progress report and present to Company for review and comment;
19. support the Company in providing periodic status updates and reports to Governmental Authorities and third parties as may be required;
20. maintain in good order at the Site all necessary documentation for the performance of the Work, including at least one (1) record copy of the design and engineering documents, project execution plan, construction procedures, quality assurance manuals, drawings, specifications, product data, samples, and modifications, marked currently to record changes made during construction, all of which will be available to the Company for inspection and use at all times;
21. promptly notify the Company in writing if the EPC Contractor believes that the Guarantees will not be met, and shall specify in such notice the basis for such belief, and the corrective action to be taken by the EPC Contractor; and
22. If requested by the Company, during start-up and testing prior to final acceptance, EPC Contractor shall maintain qualified personnel to support the operation and maintenance of the Project.

## **ARTICLE 6. SUBSTANTIAL COMPLETION**

1. Substantial Completion shall occur when the Company has confirmed that all of the following conditions have been satisfied or waived in writing by the Company:
  - a. all equipment has been installed in accordance with manufacturers' requirements and the requirements of this EPC Contract and all applicable

pass-through warranties, as identified on Exhibit L attached hereto, have been assigned to the Company;

- b.** all Work has been completed to the extent necessary to permit safe and reliable generation and transmission of electrical power in accordance with the Scope of Work and design specifications;
- c.** the Punch List has been agreed upon and accepted in writing by the Company;
- d.** all Work has been completed in accordance with Law, Land Use Agreements, and all building, electrical and code inspections required by the local electric distribution company or Law have been successfully completed and applicable certifications have been obtained;
- e.** all of the following documents to the extent necessary to verify the requirements of this EPC Contract have been transmitted to Company and compiled in a format consistent with this EPC Contract: (i) all vendors' and other manufacturers' instructions, tests and certified drawings relating to Materials; (ii) QA/QC, and other test and inspection certificates and reports applicable to the Work; (iii) Specifications and Drawings (current as of such time); (iv) construction turnover packages; and (v) Project operating procedures and manuals, including all applicable system operations and maintenance manuals;
- f.** the EPC Contractor has replaced or refilled any consumables and spare parts consumed during commissioning and testing;
- g.** all activities in the construction and testing phases, as more particularly described in this EPC Contract, have been successfully completed;
- h.** all Delay Liquidated Damages have been paid in full;
- i.** the Project has successfully passed the Performance Test;
- j.** the medium voltage infrastructure and the grid connection for the Project are mechanically, electrically and functionally complete; the Project is interconnected with the local electric distribution company and is producing electricity; and
- k.** the New Jersey Board of Public Utilities or its designee has certified that the Project is qualified to generate SRECs based on the electrical output of the Project.

**2.** The EPC Contractor shall issue a Certificate of Substantial Completion, substantially in the form of Exhibit J, to the Company including such operating data, documentation, and certifications as necessary to verify that the conditions for Substantial Completion in Section 6.1 have been met. Within fifteen (15) Days thereafter, the Company

shall either notify the EPC Contractor of why Substantial Completion has not occurred or accept the Certificate of Substantial Completion.

**3.** If Substantial Completion has not occurred, the EPC Contractor shall perform all necessary Work for Substantial Completion, and the foregoing notice procedure shall be repeated until Substantial Completion occurs at which time Company shall accept the Certificate of Substantial Completion.

**4.** The Company may, at its option, place the Project into operation prior to the Substantial Completion Date. Such placement into service shall not constitute acceptance thereof or acknowledgement that the Substantial Completion Date has occurred. The EPC Contractor shall cooperate with Company and allow the Company sufficient access to the Project so that it may operate the Project.

**5.** The EPC Contractor shall continue the Work until Substantial Completion has been achieved.

#### **ARTICLE 7. FINAL ACCEPTANCE**

**1.** Final Acceptance shall occur when all of the following conditions have been satisfied:

- a.** the Company has issued a Certificate of Substantial Completion;
- b.** the Site is free of construction debris;
- c.** all items on the Punch List have been completed;
- d.** no Change Requests are pending;
- e.** EPC Contractor has provided six (6) hard copy sets of the final Project as-built documentation including:

\*All as-built engineering drawings and specifications

\*Vendor Drawings and Data

\*Instruction Manuals

\*Installation, Operation and Maintenance Manuals

\*All Permits with copies of close-out records as required

\*Control system software.

\*Spare Parts Lists

- f.** EPC Contractor has provided one (1) CD of the electronic as-built documentation, including executable CADD files and “.pdf” versions of all design drawings;
- g.** EPC Contractor has provided six (6) copies of an as-built site survey documenting the Solar Project as-built conditions in relation to the Site, easement areas and right of way areas;
- h.** all Liquidated Damages have been paid in full;
- i.** the Company has received an Affidavit of Payment and Final Release, in the form set forth in Exhibit E from the EPC Contractor;
- j.** the Company has received releases and waivers of all Liens against the Project, the Site, Company and its property from each Subcontractor who performed Work at the Site and such other documentation as Company may reasonably request to establish proof thereof;
- k.** EPC Contractor has completed all Work;
- l.** EPC Contractor has removed all of its construction equipment, material and support personnel from the Site; and
- m.** EPC Contractor has delivered to the Company the Workmanship LC or has escrowed funds in accordance with the requirements of Article 20.2.

**2.** Company’s acceptance or rejection of any Punch List item shall not relieve the EPC Contractor of its obligation to complete the Project. Company shall have the right, without additional cost to Company, to suspend or delay Work on any items on the Punch List at any time that Company determines such Work may adversely affect its operation of the Project, in which case Company and the EPC Contractor shall coordinate with each other to schedule the timely completion of the items on the Punch List so as to minimize disruption of the Project’s operations.

**3.** The EPC Contractor shall issue a Certificate of Final Acceptance, substantially in the form of Exhibit K, to the Company including such operating data, documentation, and certifications as necessary to verify the conditions for Final Acceptance contained in Section 7.1 have been met. Within fifteen (15) Days thereafter, the Company shall either notify the EPC Contractor of any defects in the Work or of any other reason why Final Acceptance has not occurred (the “Final Completion Deficiency Notice”) or accept the Certificate of Final Acceptance. The Final Acceptance Date shall be the first date on which all conditions for Final Acceptance were satisfied.

**4.** The EPC Contractor shall perform all necessary Work described in the Final Completion Deficiency Notice to achieve Final Acceptance, and the foregoing notice

procedure shall be repeated until Final Acceptance occurs at which time Company shall issue a Certificate of Final Acceptance.

5. The EPC Contractor shall continue the Work until Final Acceptance has been achieved.

#### **ARTICLE 8. SCHEDULE GUARANTEES**

1. Substantial Completion shall occur on or before a date that is 60 days after the date on which the EPC Contractor has received all Permits necessary to begin construction. If the Substantial Completion Date does not occur on or before the Guaranteed Substantial Completion Date, then the EPC Contractor shall pay Company liquidated damages in the amount of One Thousand Two Hundred and Fifty dollars (\$1,250.00) per megawatt of system capacity (as measured in alternating current, pro rated on a kilowatt basis) for each Day following the Guaranteed Substantial Completion Date until the Substantial Completion Date.

2. The liquidated damages described in Section 8.1 are referred to as “Delay Liquidated Damages”. Company shall issue an invoice to the EPC Contractor for Delay Liquidated Damages and EPC Contractor shall pay any Delay Liquidated Damages no later than ten (10) Days after receipt of the invoice.

3. Each Party acknowledges and agrees that Company will suffer significant damages and substantial financial loss if any of the Guarantees is not met and such damages and financial losses will be difficult to calculate precisely; and the Liquidated Damages are fair and reasonable, are not penalties, and reflect the Parties’ assessment and estimate of such damages and financial losses. In light of the foregoing and the equal bargaining power of the Parties, the EPC Contractor accepts and agrees to the Liquidated Damages as liquidated damages.

4. Notwithstanding the EPC Contractor’s payment of Liquidated Damages, the EPC Contractor shall complete the Work and achieve Final Acceptance.

#### **ARTICLE 9. SYSTEM PERFORMANCE GUARANTEES**

1. As a condition of Substantial Completion, EPC Contractor shall conduct the Performance Test in accordance with the Scope of Work and Exhibit M. As a condition of completing the Performance Test, the Project shall achieve an acceptance test performance ratio of 82.5% (“ATPR”) as further defined in Exhibit M.

2. If EPC Contractor fails to meet or exceed the ATPR, EPC Contractor shall pay liquidated damages (the “Performance Liquidated Damages”) in the amount equal to the guaranteed output of the Project minus the actual output, divided by the guaranteed output (as measured in alternating current) *multiplied by* EPC Contract Price *multiplied by* [\_\_\_\_]. The Parties agree that the Performance Liquidated Damages will be the sole remedy for any failure to meet or exceed the ATPR.

## **ARTICLE 10. EPC CONTRACTOR INSPECTION**

1. The EPC Contractor shall be held to have inspected the Site and surrounding premises where the Work is to be performed before entering into this EPC Contract, and to have satisfied itself as to the conditions under which it will be obliged to perform the Work, or any matter that could affect the Work under this EPC Contract. The EPC Contractor shall inspect the building structure and rooftop, and shall independently confirm that the Site is suitable for the Project and that existing roof or structural warranties (if any) are not impaired or voided. No allowances shall be made if the EPC Contractor has failed to adequately inspect the Site or surrounding premises. The EPC Contractor shall in all cases arrange with the Company for inspection of the Site.

2. The EPC Contractor shall ascertain all the facts concerning conditions to be found at the location of the Work, including all physical characteristics above and on the ground and all administrative, organizational, procedural, regulatory and other obstacles and constraints, to consider fully these and all other matters which could in any way affect the Work to be provided and to make the necessary investigations relating thereto. The Company shall have no responsibility with respect to ascertaining for the EPC Contractor facts concerning physical or other characteristics or constraints at the Site.

## **ARTICLE 11. CHECKED DIMENSIONS**

1. The EPC Contractor shall check all quantities and dimensions provided by the Company, and shall be responsible for any errors which can be discovered by examination or checking of this EPC Contract. The EPC Contractor shall be responsible for the joining and fitting of all parts of the Work, and any oversight or inspection by the Company shall not relieve the EPC Contractor of any responsibility under the EPC Contract.

## **ARTICLE 12. EPC CONTRACTOR'S DRAWINGS**

1. If requested by the Company, the EPC Contractor shall furnish prints of shop or detailed drawings as required in this EPC Contract for the Company's review and comment, and any such comments shall be addressed to the Company's satisfaction before fabrication of any part of the Work is commenced. The EPC Contractor shall prepare these drawings on the NTP Date.

2. The review and comment of such shop, detail or other drawings by the Company is not to be construed as a complete check of the drawings or of the sufficiency of design, and shall not reduce the responsibility of the EPC Contractor to complete the Project in accordance with this EPC Contract.

3. The EPC Contractor shall furnish such prints of drawings as may be required for records, inspection, or general superintendence of the Work, and for any use in connection with the Work. Reproducible tracings shall be furnished when requested by Company.

## **ARTICLE 13. WARRANTY AND CORRECTION OF WORK**

1. The EPC Contractor warrants that for five (5) years from the date of Substantial Completion (the “Warranty Period”), all Work including Materials provided by the EPC Contractor or any of its Subcontractors shall: (a) be of high quality and be free from any defects or deficiencies; (b) be suitable for the intended purposes; (c) result in dependable service and performance as specified in, or which may reasonably be inferred from, this EPC Contract; (d) comply with the Host’s existing roof or structural warranty, current industry codes and standards and sound engineering and work practices in the U.S. solar industry; (e) comply with all applicable Law; (f) not violate any patent, copyright, or other proprietary interest; (g) achieve the Performance Guarantees; (h) otherwise fully conform in all respects to the EPC Contract, and (i) shall be new and free from any Lien.

2. During the Warranty Period, the EPC Contractor shall, without expense to the Company, promptly repair, replace, or re-perform any Work, including Materials in whole or in part, which fails to conform to the Warranty or EPC Contract, and the EPC Contractor shall also bear the expense of making good all Work of either the Company or other contractors which is impaired, destroyed, or damaged by such repair, replacement, or re-performance. All Warranty work shall be warranted for the longer of (a) the original remaining Warranty period, or (b) two (2) additional years from the date of completion of such repair, correction, replacement or re-performance.

3. The EPC Contractor shall, within three (3) Days of receiving notice from the Company, repair, correct, replace, re-perform and retest any Work that fails to conform to this EPC Contract at no additional cost to the Company. The EPC Contractor shall perform the repairs, rectification, replacements and corrective Work required hereunder in conjunction with the operations schedule of the Project, Neither Final Acceptance, nor final payment shall relieve the EPC Contractor of its responsibility to provide conforming Work.

4. If (i) an emergency exists or (ii) if the EPC Contractor does not diligently correct a warranty item within three (3) Days after written notification thereof by the Company, the Company shall have the right, at its option and the EPC Contractor’s sole cost, to repair, replace, or correct such nonconforming Work, provided further that the Company may, at its option, take a credit for the costs and expenses thereof against the Contract Price, including applying to such costs and expenses any or all Retainage then held by the Company (or drawing under the Retainage LC, if one has been posted, and/or Performance LC). If the Retainage and/or the drawing under the Retainage LC then held is insufficient to cover such costs and expenses, the EPC Contractor shall pay the excess of such costs and expenses to the Company within five (5) Days following written demand therefor. If the Company elects to perform any repair, replacement or correction of such nonconforming Work, such performance shall not affect the EPC Contractor’s warranty on any other part of the Work or portions or components thereof.

5. The liability of the EPC Contractor shall extend to all damages caused by the breach of any of the foregoing warranties and shall include, but not be limited to, the cost of removal and replacement of nonconforming Material, correction of its Work, and the cost of removal and reinstallation of other material or work made necessary thereby.

6. Acceptance by Company of the EPC Contractor's quality assurance/quality control program shall not be construed to diminish the EPC Contractor's obligations under this Contract.

7. EPC Contractor shall assign to the Company the applicable pass-through warranties, as identified on Exhibit L attached hereto, from the Major Equipment Vendors. EPC Contractor will ensure that the warranty on photovoltaic modules shall include statements that (a) the modules are free from defects in materials and workmanship under normal use, installation, operation and service for a period of five (5) years and (b) the modules carry a power output guarantee of 90% of the nominal output power rating during the first ten (10) years and 80% for the first twenty-five (25) years. EPC Contractor agrees that the warranty on inverters shall be for at least five (5) years. The PV module supplier will provide a warranty consistent with a minimum peak power generated at Standard Test Conditions, which will be no less than the nominal power output ratings set forth in the applicable panel manufacturer warranty.

#### **ARTICLE 14. ASSIGNMENT**

1. The EPC Contractor shall not assign or delegate its rights or obligations under this EPC Contract (including without limitation by way of merger or operation of law) or any part thereof to any Person, without the prior written consent of the Company. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

2. The Company may, without the consent of the EPC Contractor, (i) assign or create a security interest in its rights and interest under or pursuant to this EPC Contract, the Project, any movable property of Company or any other rights or assets of Company in favor of any Financing Party and (ii) upon prior written notice to the EPC Contractor, assign this EPC Contract or its rights or obligations hereunder to any affiliate or joint venture of the Company.

#### **ARTICLE 15. LIENS**

1. In consideration of any payments, whether full, partial, or disputed, made by EPC Contractor hereunder, the EPC Contractor hereby (and on behalf of its Subcontractors) waives and forever releases Company, Host and their real property from any past, present, or future Lien based, in whole or in part, or any Work, services, materials, or equipment provided or to be provided, under this EPC Contract. The EPC Contractor shall: (a) keep (and shall ensure that each Subcontractor keeps with respect to its portion of the Work) the Project, the Site, and the Materials free and clear of any Lien, (b) secure the discharge of any Lien in respect of Work for which the EPC Contractor has been paid within thirty (30) Days of its obtaining notice thereof, or in the alternative, bond off the Lien, and (c) pay all costs and expenses, including bonding costs and legal fees, in connection with any Claim resulting from the EPC Contractor's breach of the foregoing provisions.

2. In the event that any Lien is filed against the Company, the Host or the Site by any Subcontractor, then the EPC Contractor, at no cost or expense to the Company, shall immediately: (a) pay the claimant thereof and obtain a discharge thereof from the claimant, or cause the Lien to be discharged by filing a surety bond or making a deposit of funds in the

manner required by law; and (b) take any and all other steps which may be necessary to resolve and discharge any such Lien.

3. The EPC Contractor shall indemnify and hold harmless the Company from and against any Loss due to any Lien or Claim made or filed by any Subcontractor.

4. The EPC Contractor shall, at the Company's option and at the EPC Contractor's own cost and expense, defend the Company against any Claim premised upon any Lien or Claim made or filed by any Subcontractor which in whole or in part, are based on any work, services, materials, or equipment provided or to be provided under this EPC Contract.

## **ARTICLE 16. INDEMNIFICATION**

1. General. The EPC Contractor's obligation to defend, indemnify, and hold harmless under the provisions of this Article shall exclude only those instances which are the result of the Company's intentional and deliberate misconduct or where the personal injury, death, occupational disease or loss or damage to real or personal property was solely the result of the Company's negligence.

### **2. Losses and Damage.**

(a) The EPC Contractor shall defend, at the Company's option and at the EPC Contractor's own cost and expense, and shall indemnify and hold harmless each Company Person from and against any Loss due to personal injury, death, or occupational disease of any person (including, but not limited to, any of the EPC Contractor's or any Subcontractor's employees or agents) and/or loss or damage to any real or personal property; which directly or indirectly arises out of or results from or is caused in whole or in part by any act or omission, willful misconduct or negligent, reckless or tortuous act or omission of the EPC Contractor and/or any of its Subcontractors.

(b) The EPC Contractor shall defend, at the Company's option and at the EPC Contractor's own cost and expense, and shall indemnify and hold harmless each Company Person from and against any Loss due to (i) the failure of the EPC Contractor or its Subcontractors to comply with Land Use Agreements, which in whole or in part arise out of, relate to, result from, or are connected with the performance of any Work; (ii) the EPC Contractor's and/or Subcontractors' use, operation, or possession of any Materials; (iii) the nature or condition of the Site, (iv) premises or facilities where any Work was provided; and/or (v) the EPC Contractor's or any Subcontractor's failure to provide adequate preventative and protective measures, safeguards or devices.

(c) The EPC Contractor shall defend each Company Person against any Claim which, in whole or in part, actually or allegedly arises out of, relates to, results from, or is connected with any Loss or any violation hereunder by the EPC Contractor or any of its Subcontractors. For purpose of fulfilling its duties to defend, indemnify and hold harmless each Company Person, the EPC Contractor waives the immunities, rights, or defenses which may be available under applicable worker's compensation laws.

3. Compliance With Law. The EPC Contractor shall comply with all applicable Law (and any Change-in-Law), and the requirements of all commissions, boards, bodies, and agencies having jurisdiction over the Company, any EPC Contractor Person, Work, or over or with respect to any persons or entities employed in the provision of Work. The EPC Contractor shall indemnify and hold harmless each Company Person from and against any and all Losses which in whole or in part arise out of, relate to, result from, or are connected with any violation thereof by the EPC Contractor or any of its Subcontractors. The EPC Contractor shall, at the Company's option and at the EPC Contractor's expense, defend the Company against any and all Claims whether just or unjust, which in whole or in part actually or allegedly arise out of, relate to, result from, or are connected with any such violation by the EPC Contractor or any of its Subcontractors, provided that the EPC Contractor shall not settle or make a plea with respect to any proceeding without the Company's prior written consent.

4. Patent, Copyright And Proprietary Interests. The EPC Contractor shall not infringe upon or violate any patent, copyright, service mark, trademark, trade secret or any other proprietary interest of any kind of any Person. The EPC Contractor shall indemnify and hold harmless the Company from and against any and all Losses due to any infringement or violation of any proprietary interest which in whole or in part, arise out of, relate to, result from, or are connected with any infringement or violation thereof. The EPC Contractor shall, at the Company's option and at the EPC Contractor's expense, defend the Company against any and all Claims, whether just or unjust, that any Work invention, mark, name, diagram, drawing, design, apparatus, process, or work of authorship, or any part thereof, provided under this Contract, or that the use of any such item or part thereof, constitutes an infringement or violation of any proprietary interest. If the use of such item or any part thereof shall in any suit or proceeding be held to constitute an infringement or violation of any proprietary interest and the use thereof be enjoined, the EPC Contractor shall, at its sole expense, either: (x) procure for Company the right to continue to use such item, or part thereof; (y) replace it with non-infringing or non-violating items; or (z) so modify the item that it becomes non-infringing or non-violating. Any substituted non-infringing or non-violating items shall, in the Company's judgment, be in quality and performance equal to or better than the items replaced. To the extent that the EPC Contractor has a patent, copyright, or other such proprietary interest in any Work to be provided under the EPC Contract, the EPC Contractor hereby grants Company an irrevocable, perpetual, nonexclusive, royalty-free, license to reproduce, distribute, and use such Work, including the preparation of derivative works in connection with, the ownership, operation, use or maintenance of the Project.

5. In any and all claims against Company by any employee of the EPC Contractor or any employee of any Subcontractor or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation stated herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the EPC Contractor or any Subcontractor under any applicable workers' compensation Law, disability Law or any other Law.

6. The EPC Contractor shall defend, in good faith and at its expense, subject to the provisions of this Article 16, any claim or demand set forth in a Notice of Claim relating to a third-party claim that is properly indemnifiable hereunder or that the EPC Contractor disputes but elects to defend (and reserve for subsequent determination whether properly indemnifiable

hereunder), and the Company, at its expense, may participate in the defense. Within thirty days after receipt of a Notice of Claim, the EPC Contractor must notify the Company in writing to confirm that the EPC Contractor is proceeding with the defense of the third-party claim as required hereunder. The Company may not settle or compromise any third-party claim as long as the EPC Contractor is defending it in good faith and is diligently conducting such defense. If the EPC Contractor does not so notify the Company that the EPC Contractor is proceeding with the defense of the third-party claim, the Company may undertake its defense, and the EPC Contractor will be bound by the result obtained by the Company through settlement or judgment and is precluded from arguing that Company's defense costs are unreasonable.

7. Except as otherwise provided herein, neither party, without prior written consent of the other Party, shall enter into any settlement of any third-party claim unless (i) there is no finding or admission of any violation of legal requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the other Party or its Group (as used herein, "its Group" shall refer to the Company or EPC Contractor, as the case may be) or the settlement includes a complete and unconditional release of the Company and its Group with respect to the third-party claim, (ii) the sole relief provided is monetary damages that are paid in full by the settling Party, and (iii) the settlement would not lead to liability or create any financial or other obligation on the part of the other Party or its Group. If a firm offer to settle a third-party claim is made by the Person bringing such third-party claim without leading to liability or the creation of a financial or other obligation on the part of the Company or its Group and the EPC Contractor desires to accept and agree to such offer, the EPC Contractor may give notice to the Company to that effect. If the Company fails to consent to such firm offer within fifteen (15) days after its receipt of such notice, the Company may continue to contest or defend such third-party claim and, in such event, the maximum liability of the EPC Contractor with respect to such third-party claim will be the amount of such settlement offer, plus all costs and expenses paid or incurred by the Company up to the end of such fifteen (15) day period.

8. If the EPC Contractor breaches any representation or warranty hereunder, the EPC Contractor shall indemnify, defend, hold harmless and otherwise protect the Company's interests as set forth in the EPC Contract.

## **ARTICLE 17. INSURANCE**

1. The EPC Contractor shall provide, at its sole cost and expense, the insurance set forth in Exhibit Q from the start of the Work until the Substantial Completion Date:

2. Each Party shall promptly notify the other Party of any actual or, upon obtaining knowledge thereof, potential claim under the insurance maintained under this Article 18 in excess of fifty thousand dollars (\$50,000).

3. The insurance companies shall have no recourse against any insured party for payment of any premiums or assessment under any policy if such insured party is not responsible for maintaining such insurance under this EPC Contract.

4. Irrespective of the requirements as to insurance to be carried as provided for in this Article 18, the insolvency, bankruptcy or failure of any insurance company to pay any

claim accruing shall not excuse any party from its obligations to carry, or arrange to be carried, insurance as herein required. In case of cancellation of any policy required to be carried by this Article 18, or the insolvency, bankruptcy or failure of any such insurance company that has issued a policy hereunder, the party responsible therefore shall promptly obtain new insurance policies in the amounts and coverage required hereby.

5. Any insurance which any EPC Contractor Person may carry shall be secured and maintained at its own expense. Any such policies of insurance shall contain waivers of subrogation as provided in this Article. All deductibles under any policy required to be carried hereunder shall be the responsibility of the EPC Contractor irrespective of any negligence of the Company.

#### **ARTICLE 18. SAFETY MEASURES**

1. The EPC Contractor shall take all precautions necessary to protect from personal injury, death or occupational disease, all workers and all other persons who may be on or about the Site or surrounding premises where Work is being done. The EPC Contractor shall comply with the EPC Contractor's safety plan and shall designate in writing to the Company the EPC Contractor Safety Representative for the Site and surrounding premises where the Work is performed.

2. The EPC Contractor shall solely be responsible for the safety of all persons working at the Site or who enter the Site for any purpose until the Substantial Completion Date. The EPC Contractor shall ensure that all the EPC Contractor Persons comply with, and use reasonable efforts to provide that all Company Persons comply with, all applicable Law relating to health and safety. The EPC Contractor shall undertake for the Site reasonable measures to prevent vandalism, theft, and danger to the Project, the Site, Equipment, and personnel. EPC Contractor shall be responsible for any loss or delay resulting from the failure to provide the foregoing. Without limiting the generality of the foregoing, the EPC Contractor shall: (a) take reasonable precautions to prevent injury to all persons on the Site and arrange to have first aid administered to all persons who are injured or become ill on the Site, and promptly report all accidents and injuries to Company; (b) provide sufficient light for all Work; (c) make contact with the local fire department, police department, and hospital (the "Emergency Entities") and be aware of local emergency response procedures.

3. The Company shall have the right to stop Work whenever, in the Company's judgment, safety violations or other conditions or circumstances exist that could result in personal injury, death, occupational disease or damage to property. The expense of any such stoppage of Work, including any standby time or other cost incurred, shall be at the EPC Contractor's expense. Those persons responsible for the safety violations shall be removed from the Site. The EPC Contractor's failure or refusal to correct safety violations shall entitle the Company to terminate this EPC Contract for cause.

4. All Work done and Materials used on the Site shall be in compliance with the Safety Plan and with the Safety and Health Standards promulgated under the Occupational Safety and Health Act of 1970 as amended. The work location may require the EPC Contractor to comply with OSHA regulation "Occupational Exposure To Bloodborne Pathogens" (29 CFR

1910.1030). The EPC Contractor shall inform all its employees and Subcontractors of this potential biohazard and ensure that universal precautions are exercised in the handling of such materials to prevent or eliminate this potential. Similarly the requirements of OSHA's Hazardous Waste Operations and Emergency Response ("HAZWOPER") regulations (29 CFR 1910.120) may apply to the Work. The EPC Contractor shall share with Company the EPC Contractor's determination as to whether HAZWOPER applies and the basis for that determination.

5. The EPC Contractor shall notify and provide the Company with (a) sufficiently detailed accident reports within 24 hours of any accident, and (b) a copy of all reports made to Governmental Authorities and insurance companies relating to any accident or injury occurring during the performance of the Work within 24 hours of their submission.

6. No Material supplied shall contain asbestos except as permitted by EPA Regulations (40 CFR 763.145).

7. All trucks, vehicles, equipment, machinery, or the like provided by the EPC Contractor shall be in safe operating condition and at all times shall be properly protected, maintained, and safely operated.

8. The EPC Contractor shall perform appropriate drug testing on all EPC Contractor persons having access to the Site. The EPC Contractor shall adopt a drug and alcohol abuse policy that conforms to the Company's policies on alcohol and drug abuse.

9. EPC Contractor shall follow good construction practices, including dust monitoring and control, at the Site. EPC Contractor shall have a person on Site with the requisite training and experience to observe on Site activities and assess the need for additional worker protections.

#### **ARTICLE 19. PROTECTION OF WORK AND PROPERTY**

1. The EPC Contractor shall assume the risk of loss or of damage to real or personal property comprising the Work (and repair and replace such at its sole cost and expense without being entitled to a Change or any other relief) until the Substantial Completion Date.

2. The EPC Contractor shall take reasonable precautions necessary to protect all Work, owned, leased, or rented by it, from any loss or damage to same due to fire, theft, accident, failure of parts, improper handling, incompetent operators, vandalism, strikes, depreciation, wear and tear, careless operation, neglect, failure to lubricate properly, or lack of protection from weather, and the EPC Contractor agrees that Company shall not be liable for any loss, repairs, or replacement made necessary by any or all such causes.

3. Where acts or omissions of the EPC Contractor or its agents, employees, Subcontractors, or any of them results in damage to property, defective workmanship, or excessive cost of Work or any or all of them, the cost of correcting such damages, deficiencies, and excessive costs shall be borne by the EPC Contractor. If the Company has already paid the cost occasioned by such acts or omissions, it may withhold, deduct, or set off money due the EPC Contractor to reimburse the Company for such cost.

4. The EPC Contractor shall at all times perform its Work so as to assure the protection of the Company's or Host's property from loss or damage, and avoid causing interruption to the Work or operation of the Company's or Host's equipment or facilities. The EPC Contractor shall ensure that no neighboring land, property or property right is injured or damaged by the EPC Contractor's and its Subcontractors' activities.

**ARTICLE 20. CREDIT ENHANCEMENT**

1. Concurrently with the execution and delivery of this EPC Contract, the EPC Contractor shall deliver to the Company the Performance LC issued by an Eligible Bank in a stated amount equal to \_\_\_ percent (\_\_\_%) of the EPC Contract Price which may be drawn upon by the Company if the EPC Contractor fails to comply with any provision of this EPC Contract. The Performance LC shall expire no earlier than thirty (30) Days after the Final Acceptance Date. In lieu of providing a Performance LC, EPC Contractor shall deliver to the Company concurrently with the execution and delivery hereof cash collateral in an amount equal to \_\_\_\_\_ percent (\_\_\_ %) of the EPC Contract Price ("Cash Collateral Account"), such amount to be used by the Company for the foregoing purposes. The Company shall return the Cash Collateral Account no later than thirty (30) Days after the Final Acceptance Date. The Cash Collateral shall be transmitted to Company by wire transfer pursuant to the following wire instructions:

Bank Name:  
ABA:  
Account:  
Account Name:

2. As a condition of Final Acceptance, the EPC Contractor shall deliver to the Company an irrevocable standby letter of credit in substantially the form of Exhibit P (the "Workmanship LC") issued by an Eligible Bank in a stated amount equal to \_\_\_ percent (\_\_\_%) of the EPC Contract Price which may be drawn upon by the Company if the EPC Contractor fails to cure a breach of any of the warranties contained herein. The Workmanship LC shall expire no earlier than five years after the Final Acceptance Date. In lieu of the Workmanship LC, EPC Contractor shall have the option of providing cash in an amount equal to \_\_\_ percent (\_\_\_%) of the EPC Contract Price to be held by the Company for five years for the foregoing purposes.

**ARTICLE 21. INDEPENDENT CONTRACTOR**

1. The EPC Contractor's status shall be that of independent contractor. Neither the EPC Contractor nor any Subcontractor, nor any of their, employees, agents, or Subcontractors shall, for any reason or purpose, be deemed to be an agent, partner, or employee of the Company. This EPC Contract creates no rights or benefits between the Company and any person or entity other than the EPC Contractor. No Subcontractor shall be deemed a third party beneficiary of, or have any interest in, this EPC Contract.

2. The EPC Contractor represents that it is fully and properly experienced, qualified, licensed, organized, equipped, insured, and financed to provide the Work and that the EPC Contractor's employees are well-trained, experienced, qualified, competent, reliable, and trustworthy. Company shall rely on the organization, management, skill, cooperation, and efficiency of the EPC Contractor and its contractors to provide the Work conforming to the EPC Contract within the Project Schedule.

3. The EPC Contractor shall have full responsibility for all labor and employment matters, including, but not limited to, for all its and its Subcontractor's selection, hiring, discipline, supervision, control, compensation, benefits, labor relations, collective bargaining, as well as payroll taxes and costs.

4. The EPC Contractor shall at all times be fully responsible for the acts or omissions of its employees, agents, or any other person or entity under its direction or control, including the acts or omissions of its Subcontractors and their employees, agents, or other person or entity under the Subcontractor's direction or control.

5. Any general superintendence, inspection, review, coordination, monitoring, and oversight by the Company or the exercise of any of the Company's rights under the Contract shall not relieve the EPC Contractor of any of its responsibilities under the EPC Contract.

## **ARTICLE 22. SUBCONTRACTORS AND VENDORS**

1. Prior to the start of Work, the EPC Contractor shall submit to the Company a list of subcontractors and vendors for Company's prior review and approval. The approval or rejection of any Subcontractor or vendor by the Company shall not relieve the EPC Contractor of any of its responsibilities under the EPC Contract nor shall it be the basis for additional charges to the Company.

2. The EPC Contractor shall bind every Subcontractor to the terms and provisions of this EPC Contract as far as it is applicable to the Subcontractor's work. The EPC Contractor shall provide the Company with copies of all executed subcontracts prior to Subcontractor's start of Work.

## **ARTICLE 23. FORCE MAJEURE**

1. "Force Majeure Excused Event" means, and shall be limited to, those events listed below and occurring in New Jersey or any areas within a 30 mile radius from the Site, which are outside of the asserting Party's control that materially and adversely affect the performance of a Party (other than payment obligations) hereunder: earthquake, volcanic eruption, landslide, famine, plague, epidemic, war, or adverse weather conditions, provided that the adverse weather conditions are of a magnitude which has not occurred within the past fifty (50) years, and provided further that the first ten (10) Days of any such weather related delays shall not be considered a Force Majeure Excused Event.

2. Force Majeure Excused Events shall not excuse a Party (i) if the failure to perform or delay is due to the non-performing Party's fault, negligence or lack of diligence; (ii)

if the Party asserting a Force Majeure Excused Event fails to provide notice as provided herein; or (iii) to the extent that the Force Majeure Excused Event was caused or provoked by the asserting party (or any EPC Contractor Person in the case that the EPC Contractor is the asserting Party); (iv) if an experienced contractor could have foreseen and taken reasonable precautions to prevent such event or circumstance; (v) if such event or circumstance does not result in a delay to the critical path of Work; or (vi) where the Party asserting a Force Majeure Excused Event fails to fulfill its obligations as soon as reasonably possible after such Force Majeure Excused Event has been eliminated or has ceased to prevent the affected party from fulfilling its obligations.

3. If the Parties do not agree that a Force Majeure Excused Event has occurred, the burden of proof shall rest with the asserting Party. If a Force Majeure Excused Event has occurred, the EPC Contractor shall be entitled to a Time Change only.

4. The EPC Contractor shall, at its sole expense, use its best efforts to avoid and minimize delay resulting from a Force Majeure Event and shall keep the Company promptly informed of any event which may delay performance of the Work. Delay in the EPC Contractor's receipt of subcontracted portions of the Work, including Materials, for any reason shall not entitle the EPC Contractor to any Change or any other relief.

5. Within forty eight (48) hours from the beginning of any delay resulting from a potential Force Majeure Excused Event, the EPC Contractor shall provide a detailed written notice to the Company of the cause(s) of such delay. In a case of a continuing cause of delay, only one request shall be necessary.

6. Nothing contained herein shall preclude the EPC Contractor from holding any other contractor(s), subcontractor(s), or entity responsible for unreasonable or unjustifiable delays incurred by the EPC Contractor caused by such other contractor, subcontractor, or entity.

7. The EPC Contractor's full compliance with the requirements of this Article shall be a condition of receiving any Change and the EPC Contractor's failure to comply with these requirements shall constitute a waiver of any right to a Change or any other claim.

8. Nothing within this Article shall prevent the Company from exercising its termination or suspension rights under this EPC Contract.

#### **ARTICLE 24. EPC CONTRACTOR PERSONNEL**

1. The EPC Contractor shall provide a list of key EPC Contractor personnel which shall be updated as necessary from time to time. All key EPC Contractor personnel must be acceptable to the Company.

2. The EPC Contractor shall provide on-site management and supervision of the Work. The EPC Contractor shall provide supervisory personnel to be on location whenever and wherever Work is being performed and to ensure that all Work is being carried out in a safe and efficient manner and in accordance with this EPC Contract.

## **ARTICLE 25. HAZARDOUS MATERIALS AND ANTIQUITIES**

1. The EPC Contractor shall be solely responsible for, and shall comply with all applicable Law with regard to: (i) managing the soils encountered during the Work, (ii) any Antiquity encountered during the Work, and (iii) remediating and disposing of Hazardous Materials encountered during the Work.

2. Promptly after discovering any material on the Site believed or considered to be a Hazardous Material or Antiquity, the EPC Contractor shall: (i) immediately report the condition to the Company before disturbing such materials; (ii) promptly present a plan for properly addressing the situation; and (iii) stop Work in any affected area as appropriate.

3. The EPC Contractor shall prepare and recommend a comprehensive health and safety plan to the Company which will address, among other things, (i) the removal and disposal of such Hazardous Material or preservation of such Antiquity, (ii) potential off-Site disposal sites, and (iii) identify Permits necessary to implement the plan. The Company shall review such recommendations and direct the EPC Contractor to implement a plan to address the existing condition. The EPC Contractor shall provide to the Company copies of all documents relating to such Hazardous Material, including hazardous waste manifests, approvals and/or authorizations from landfill or other treatment, storage or disposal facilities and all laboratory data.

## **ARTICLE 26. DOCUMENT DELIVERY**

1. The EPC Contractor shall deliver all submissions required for the Company to timely comply with the requirements of Governmental Authorities, Permits, Laws, Land Use Agreements, or local utilities, all as dictated by the Project Schedule.

## **ARTICLE 27. SEQUENCE OF WORK**

1. The EPC Contractor shall commence Work upon the execution of this Agreement. Notwithstanding the foregoing, the EPC Contractor shall not commence the purchase of long lead time equipment until receipt of an Equipment NTP from the Company. The Company shall not be responsible for any costs, expenses or claims associated with the purchase of such long lead time equipment prior to the issuance of the Equipment NTP.

## **ARTICLE 28. COORDINATION AND COOPERATION**

1. The EPC Contractor shall cooperate with the Company, Host, local utility, and other Company contractors, if any, to ensure that the Work and their work is properly performed on schedule. The EPC Contractor shall collaborate with any other contractors and coordinate the Work with the work of such other contractor(s), if any, which could affect the Work, and the EPC Contractor shall proceed in such manner as not to interfere or delay the progress of the work as a whole.

2. If any part of the Work depends for proper execution or results upon the work of local utility, or any other contractor, the EPC Contractor shall inspect and promptly report in writing to the Company any defects in such work that renders it unsuitable for such

proper execution or results. Failure of the EPC Contractor to do so shall constitute its acceptance of such other work as fit and proper for the reception of the Work.

3. In cases of disagreement or disputes between the EPC Contractor, the local utility company, and another contractor or Subcontractor which could delay or interfere with the Work due to the failure to collaborate and cooperate or which cannot be resolved between the EPC Contractor and the others involved, the Company shall be given prompt written notice thereof by the EPC Contractor specifying in detail the disagreement or dispute. In such cases, the Company shall have the right to determine the proper method of coordinating the Work, and the Company's decisions in this regard shall be final, binding, and conclusive.

4. The EPC Contractor shall provide, as requested by the Company, an on Site representative duly authorized to act for, and on behalf of, the EPC Contractor and to commit to decisions that shall be binding on the EPC Contractor. If requested, said representative shall attend meetings which may be called by the Company. Notwithstanding the existence of a dispute or disagreement between the Company and the EPC Contractor, the EPC Contractor shall diligently and without interruption proceed with the Work to ensure full completion of the Work in accordance with the Deadlines.

5. The EPC Contractor shall coordinate with the Host to ensure the safety of Host's personnel, employees, and invitees. As between Company and EPC Contractor, the EPC Contractor shall be solely responsible for the safety of such persons.

## **ARTICLE 29. LABOR**

1. The EPC Contractor shall enforce discipline and good order on all persons on the Site. The EPC Contractor shall remove from the Site any person: whose presence is detrimental to the performance of the Work; who is not qualified to perform the Work assigned; or if reasonably requested by the Company.

2. The EPC Contractor, its employees and all of its Subcontractors and their employees shall work in harmony with all trades, employees and the contractors engaged in any work on the Site.

3. The EPC Contractor agrees that all Work that falls within the jurisdiction of a recognized skilled trade or craft shall be performed by union craft labor at a rate at least equivalent to the prevailing wage for the county in which the work is to be performed using the appropriate job classification for that county that most closely aligns with the work that the individual is actually performing. EPC contractor further agrees that, in connection with said Work, it or its subcontractor currently is or will become signatory to a Construction Industry Association form of collective bargaining agreement with an IBEW "A" Local or the appropriate bargaining representative for represented workers in the construction industry trades and crafts applicable to the Work. If the Work qualifies as a "public work" under the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. (the "Act"), the EPC Contractor shall be required to adhere to and comply with all aspects of the Act applicable to the EPC Contractor as a result of this EPC Contract.

4. The EPC Contractor shall furnish qualified workers in sufficient number for the efficient performance and timely completion of the Work in accordance with the Project Schedule and no failure to obtain qualified or sufficient labor shall entitle EPC Contractor to a Change. EPC Contractor shall, at all times, employ a sufficient number of qualified persons so that the Work is completed in an efficient, economical, professional and timely manner. EPC Contractor shall use all means and avenues of recruitment to insure sufficient labor for proper and timely completion of the Work.

5. The EPC Contractor and its Subcontractors shall comply with the Company's rules, regulations, and policies regarding personnel practices in the workplace, and Fitness For Duty requirements, as such requirements are in effect as of the date of execution of this EPC Contract, including but not limited to, its policy on drugs and alcohol. Copies of the rules, regulations, policies, and practices are available upon request from the Company. The EPC Contractor shall cause the requirement of the foregoing sentence to be inserted in all agreements with Subcontractors.

6. Whenever threatened or actual picketing, slowdowns, work stoppages, or other labor dispute may delay or otherwise affect the Work, the EPC Contractor shall immediately notify the Company in writing. Such notice shall include all relevant information regarding the labor dispute, its background, and the steps the EPC Contractor proposes to take to resolve or prevent its occurrence.

7. In the event of a labor dispute involving the EPC Contractor, including any of the EPC Contractor's Subcontractor(s), the EPC Contractor shall promptly initiate proceedings in such administrative, judicial, or arbitral forum having jurisdiction to resolve, or minimize the impact of the labor dispute.

8. In the event of a labor dispute, the EPC Contractor shall be liable to Company for all loss or damage incurred by the Company. The EPC Contractor's obligations in the event of any labor dispute shall include taking all reasonable legal steps necessary to have pickets removed.

9. In the event of a labor dispute, the Company shall not be liable for any payment, reimbursement, or other compensation, and any increase in pay, benefits, or other terms and conditions of employment shall not be charged to Company.

10. In the event the EPC Contractor is a subscriber to a multi-employer bargaining association or group, the EPC Contractor shall, if the Company so directs, participate to the fullest extent in the collective bargaining of that group with any of those labor organizations claiming jurisdiction of any portion of the Work under this EPC Contract.

#### **ARTICLE 30. COMPANY DIRECTED CHANGES**

1. The Company shall have the right, as described below, to change the scope of the Work and to make alterations, additions, deletions, modifications, changes, or departures in the scope, schedule, sequence, method, or performance of the Work or make changes in any specifications, plans, or drawings, that it may desire (each, a "Company Directed Change"), without invalidating this EPC Contract, and the EPC Contractor agrees to effect all

such changes. Any such changes the Company elects to make shall be by written Change Order issued by the Company only and need not be executed by the EPC Contractor to be binding.

2. The Company may, at any time, by written notice to the EPC Contractor, propose a Company Directed Change. The EPC Contractor shall, at its own expense, within ten (10) Days thereafter, submit to Company a lump sum proposal, including a detailed description of changes in the Work that would be necessitated by the proposed Company Directed Change and any resulting changes that would be required herein as a result thereof.

3. In the event that a Company Directed Change decreases the cost or time of performing the Work, the Company shall be entitled to a reduction in the Contract Price reflecting such decrease.

4. Following receipt of the EPC Contractor's proposal, the Parties shall, within ten (10) Days thereafter, attempt to agree upon the cost of Company's proposed changes and the necessary changes, if any, to this EPC Contract. If the Parties agree upon all of the foregoing, they shall execute a Change Order.

5. If the Parties do not reach an agreement on the proposed Company Directed Change within ten (10) Days, the Company may, in writing, direct the EPC Contractor to proceed with the proposed Company Directed Change by unilaterally executing a Change Order, in which event, notwithstanding any other provision of this EPC Contract, the EPC Contractor shall implement Company's directed change as set forth in such Change Order executed by the Company. The EPC Contractor shall be entitled to a Change for such Company Directed Change if it submits a Change Request therefore within five (5) Days of the Company's issuance of a Change Order.

### **ARTICLE 31. CHANGES**

1. Under no circumstances other than a Change Trigger Event shall the EPC Contractor be entitled to a Time Change or a Price Change or any other relief under this EPC Contract or from the Company.

2. In order to be eligible for such a Change, the EPC Contractor must submit a Change Request in accordance with the procedures set forth herein. If it is determined that the EPC Contractor has demonstrated that it is entitled to a Price Change or a Time Change as a result of a Change Trigger Event, the Parties shall execute a Change Order.

3. In no event shall the EPC Contractor be entitled to any extension of time, or relief for, its performance hereunder on account of any act, delay, obstruction, neglect, or interference attributable to the Company or any Person or cause, unless such delay, obstruction or interference is expressly defined as a Change Trigger Event, in which case the EPC Contractor shall only be entitled to such relief as is specified herein and the EPC Contractor hereby expressly waives any and all rights, on its own behalf as well as on the behalf of all Subcontractors and the EPC Contractor's agents, servants and employees, to any claim against any Company Person for damages or additional compensation or extension of time or excuse for performance as a result thereof under any legal or equitable theory including without limitation common law principles.

4. If, pursuant to any provision in this EPC Contract, the EPC Contractor is expressly entitled to a Change because a Change Trigger Event has occurred, the EPC Contractor must submit a Change Request in order to receive such Change and the Parties shall in good faith attempt to agree upon such Change following the procedures set forth herein.

5. No Change Request shall be allowed to be submitted for any reason on or after the Substantial Completion Date if the incident giving rise to such Change Request occurred prior to the Substantial Completion Date.

6. If the EPC Contractor intends to submit to the Company a Change Request, the EPC Contractor must do so within the time period specified therefore in the relevant provision of this EPC Contract. No Change shall be made if the EPC Contractor fails to provide the Company with all notices required by this EPC Contract in connection with the Change Trigger Event in question and submit such Change Request to the Company within the relevant period therefore specified in this EPC Contract. In the event EPC Contractor fails to submit requisite Change Request in the time periods specified in the EPC Contract, EPC Contractor shall be deemed to have waived the right to any Change or any other relief. All Change Requests shall contain at a minimum: (a) all modifications, if any, as may be required to this EPC Contract; and (b) such additional information or documentation as the Company shall deem to be necessary or helpful in considering such Change Request.

7. Any Change Request submitted by the EPC Contractor for a Price Change shall be accompanied by appropriate supporting documentation containing an itemized breakdown of all elements constituting the basis for such Change Request and shall be determined based on the labor rates and unit pricing set forth on Exhibit H.

8. Any Change Request submitted by the EPC Contractor for a Time Change shall be accompanied by appropriate supporting documentation containing a detailed explanation of why the Deadlines should be postponed, and for how long, in accordance with critical path logic. Specifically, such supporting documentation shall include updated critical path schedules and demonstrate, by comparison of unaffected and affected schedule versions, the relationship between the initiating event and both the existence and extent of the EPC Contractor's entitlement to additional time.

9. The Parties shall attempt to agree upon a Change within ten (10) Days of the EPC Contractor's submission of a properly and fully documented Change Request to Company, provided always that while any Change Request is pending, the EPC Contractor shall continue to perform the Work in strict adherence to the Project Schedule and otherwise in accordance with the provisions of this Contract. The EPC Contractor shall not perform any extra or out of scope Work unless expressly authorized, in writing, by the Company.

10. When a Change has been determined and agreed upon pursuant to this Article, the Parties shall execute a Change Order reflecting such Change. The EPC Contractor may not vary or alter any part of the Work, except in accordance with a Change Order executed by the Parties or as directed by Company pursuant to a Company Directed Change. Once the parties execute a Change Order with respect to any matter, the EPC Contractor shall not be entitled to any Change or any claim for a Change, schedule extension or variation or

modification of any other item that was included in such Change Order, nor will any subsequent Change Order (except as expressly set forth therein) be construed to alter a prior Change Order. Changes in this Contract shall be made only to the extent expressly set forth in a Change Order executed by the Parties.

**11.** Change Trigger Events which reduce the quantity of Work to be provided shall not constitute a claim for damages or for anticipated or lost profits on the Work involved in such reductions, and the Company shall be entitled to a credit against the EPC Contract Price for the value of the omitted Work, but subject to an allowance to the EPC Contractor for any actual loss incurred by it in connection with expenses theretofore incurred in connection with the purchase, rental, delivery, and subsequent disposal of Materials related which are no longer useful or salvageable.

**12.** Notwithstanding anything to the contrary, the Company shall have the right to request that the EPC Contractor perform any Change on a lump sum fixed price basis. If the Parties agree that the EPC Contractor will perform out of scope work on a lump sum basis in lieu of a Price Change, the markup for overhead and profit included therein for such work shall not exceed 10%.

#### **ARTICLE 32. COMPANY'S RIGHT TO DO WORK**

**1.** If the EPC Contractor fails to furnish sufficient qualified workers or Materials of the required quality or quantity necessary to perform the Work in accordance with the requirements hereof or the Project Schedule for any period of three (3) or more Days after written notice specifying such failure, the Company shall have the option to supply workers, Materials, or both, and perform the Work. The Company shall deduct expenses incurred in engaging other Contractors, and supplying workers and Material from payments due or which may become due to the EPC Contractor or Retainage (including, without limitation, drawing under the Retainage LC and/or Performance LC). If expenses exceed the balance due or which becomes due to the EPC Contractor, the EPC Contractor shall pay the excess to the Company immediately upon written demand therefore.

**2.** Company shall have the right to perform work with its own employees or by other contractors and to permit other entities to do work during the progress and within the limits of, or adjacent to, the Site, and the EPC Contractor shall conduct its Work and cooperate with all others so as to mitigate any possible interference. The EPC Contractor shall allow other contractors or entities access to their work within the Site. The EPC Contractor shall make no claims against the Company for additional payment due to delays or other conditions created by the operations of such other parties.

#### **ARTICLE 33. CHARGES TO THE EPC CONTRACTOR FOR WORK PROVIDED BY COMPANY**

**1.** Any Work provided by the Company or its designee due to the EPC Contractor's failure to perform shall be charged to the EPC Contractor at the Company's cost, plus a fee of fifteen (15%) percent to cover overhead and burdens.

#### **ARTICLE 34. PROJECT SCHEDULE**

1. The EPC Contractor shall be responsible to ensure that all Work, including that of its Subcontractors, as well as work performed by others which may affect the EPC Contractor's Work, is included on the Project Schedule. The EPC Contractor's failure to include all such work, in whole or in part, shall not excuse the EPC Contractor from completing all Work within required dates.

2. The Company's review or acceptance of the Project Schedule or any Current Project Schedule shall not impose upon the Company any responsibility for the progress or scheduling of the Work, and the EPC Contractor shall be fully responsible to provide proper progress of the Work to completion, within the time set for completion in the approved Project Schedule.

3. Time of performance is of the essence. If the Work is behind schedule, the EPC Contractor shall increase its forces, work overtime, add shifts, or otherwise take all necessary steps to get the Work back on schedule at no additional cost to the Company.

#### **ARTICLE 35. FINANCING**

1. Upon request, the EPC Contractor shall assist the Company in obtaining project financing on a non-recourse basis. The EPC Contractor acknowledges that the Financing Parties will review this EPC Contract and may require changes hereto as a condition of providing financing, and the EPC Contractor agrees, in good faith, to consider amending this Contract to incorporate any such requirements and otherwise to cooperate with the Financing Parties. The EPC Contractor, at its expense, shall provide such documents and other technical assistance as Company may request in connection with obtaining financing for the Project including executing any consent to assignment requested by Financing Parties and a legal opinion acceptable to the Financing Parties from a reputable law firm licensed to practice in New Jersey.

#### **ARTICLE 36. INSPECTION, TESTS, AND REVIEWS**

1. Company shall have the option, without extra charge therefore, to inspect all Work under this EPC Contract at any time including at the place of manufacture.

2. No extra charge shall be made for standard factory tests usually made of Materials, nor for special tests made by the EPC Contractor on its own behalf. The Company shall be notified of any such tests and be permitted to observe them. The EPC Contractor shall give Company every reasonable opportunity to determine that all Materials meet the requirements of the EPC Contract.

3. The EPC Contractor shall furnish the Company with all test reports of the Work in electronic format if available and the Company shall have the option to review such test report prior to performance of the Work or shipment of any Materials.

## **ARTICLE 37. SETOFF**

1. All claims for money due or which becomes due from the Company shall be subject to deduction or set-off by the Company by reason of any claim arising out of the EPC Contract or any other transaction with the EPC Contractor.

## **ARTICLE 38. DISPUTES**

1. Notwithstanding the existence of a dispute between the Company and the EPC Contractor, the EPC Contractor shall diligently and without interruption proceed with the Work at such rates of progress as, in the interpretation of the Company, will ensure full completion of the Work on time and in accordance with the EPC Contract. In the event of a disagreement as regards the above, the EPC Contractor shall proceed as directed by the Company.

2. The EPC Contractor agrees to cooperate with and assist the Company in any dispute resolution, or other proceeding, involving the Project and related work whether or not the EPC Contractor is involved therein.

3. During the existence of any dispute or difference under this EPC Contract, each Party shall continue to perform its obligations under this EPC Contract.

4. Where any dispute or difference relates to the nature of the Parties' obligations under the EPC Contract, Company shall give the EPC Contractor any instructions as may be necessary for proper performance of the Work and to prevent any delay of the Work pending resolution of the dispute or difference. The EPC Contractor shall comply immediately and fully with any such instructions.

5. If a dispute arises in connection with the EPC Contract, the Parties shall refer the dispute to senior officers of each company with settlement authority. For a period of 15 Days thereafter, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be settled within such period, the Parties may proceed with litigation.

## **ARTICLE 39. ADEQUATE ASSURANCE OF FUTURE PERFORMANCE**

1. The Company shall have the right to require the EPC Contractor to provide the Company adequate assurance that the EPC Contractor will perform its obligations in a timely fashion in accordance with this EPC Contract. Should the Company request the EPC Contractor to provide adequate assurance of future performance, the EPC Contractor shall, within three (3) Days of said request, provide the Company such assurance in writing. The EPC Contractor's failure to provide said adequate assurance, or a statement by the EPC Contractor that the EPC Contractor cannot or will not perform in a timely fashion in accordance with the EPC Contract, or any act or omission of the EPC Contractor which makes it, in the Company's judgment, improbable at the time that the EPC Contractor will perform in accordance with the EPC Contract, shall permit the Company to terminate this EPC Contract for cause.

## **ARTICLE 40. SUSPENSION OF WORK**

1. The Company shall at all times have the right, without prejudice to any other of its rights or remedies, to suspend temporarily the performance of the Work, in whole or in part, for its convenience by giving written notice to the EPC Contractor. The written notice shall state the extent, effective date, and expected duration of the suspension. Upon receipt of said notice, the EPC Contractor shall: (a) stop the Work in question on the date and to the extent specified and place no further orders or subcontracts except as may be: (i) required to complete portions of the Work not suspended, or (ii) directed by the Company; (b) promptly suspend, on terms satisfactory to the Company, all orders or subcontracts related to the suspended Work; (c) take such action as may be necessary, or as the Company may direct, to protect the Work in which the Company has, or may acquire, an interest; (d) promptly comply with the Company's instructions and continue to perform and fully complete all Work that has not been suspended; (e) keep the Company fully informed about all actions taken or intended to be taken as a result of the suspension and within ten (10) Days of the written notice, submit an itemized list of all actions taken or intended to be taken, said list to be updated by the EPC Contractor as requested; (f) promptly resume and fully complete the Work if so notified by the Company; and (g) make every effort to reduce or otherwise mitigate any damage to the Company. The EPC Contractor shall not remove any Work from the Site unless the Company consents in writing.

2. After completing the actions described above, the EPC Contractor may submit a Change Request. The EPC Contractor shall furnish all information and documentation requested by the Company to substantiate the Change Request to the Company's full satisfaction. The EPC Contractor's Change Request must be submitted promptly, but not later than ninety (90) Days from the date of suspension.

3. As full compensation for such suspension, the EPC Contractor shall be reimbursed its actual, necessary, reasonable, and verifiable expenses incurred as a direct result of such slowdown or suspension. In no event shall the Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential economic loss due to the slowdown or suspension.

4. No Change Request shall be filed unless the EPC Contractor has incurred expenses as a direct result of such suspension. In the event of such suspension, the EPC Contractor shall be allowed one Day of additional time to achieve the Guaranteed Substantial Completion Date for each Day of such suspension. No compensation or extension of time shall be granted for suspension or slowdown if the Company exercises its right to suspend the Work due to the EPC Contractor's failure to provide Work, including Materials, in accordance with the requirements of this EPC Contract.

5. The EPC Contractor's full compliance with the requirements of this Article shall be a condition of receiving any Change, and the EPC Contractor's failure to comply with these requirements shall constitute a waiver of any claim for any Change or other relief.

## **ARTICLE 41. TERMINATION FOR CONVENIENCE**

**1.** The Company shall at all times have the right, without prejudice to any other right or remedy, to terminate this EPC Contract, in whole or in part, for its convenience by giving written notice to the EPC Contractor. The written notice shall state the extent and effective date of the termination. On the effective date of termination, the EPC Contractor shall:

- a.** stop the terminated Work on such date and to the extent specified and place no further orders or Subcontracts except as may be: (a) required to complete portions of the Work not terminated, or (b) directed by the Company;
- b.** promptly terminate, on terms satisfactory to the Company, all orders and agreements with Subcontractors related to the terminated Work, or, at the Company's option, assign those agreements to the Company or its designee, or take such other steps as the Company may direct;
- c.** take such action as may be necessary, or as the Company may direct, to protect the Work in which the Company has, or may acquire, an interest;
- d.** perform, at rates or on terms not to exceed those in the EPC Contract, any incidental or "close-out" work necessary, as directed by the Company, to ensure that the Company receives the full use and benefit of any Work provided prior to termination, including the provision of any and all information or documentation;
- e.** transfer to the Company title and possession of all terminated Work either partially or completely performed and complete all Work, if any, which was not terminated, provided, however, that such transfer shall not constitute acceptance of non-conforming Work.
- f.** execute and deliver all such papers and take all such steps, including the legal assignment of the EPC Contractor's contractual rights, as the Company may request for the purpose of fully vesting in it the rights and benefits of the EPC Contractor under such obligations or commitments;
- g.** promptly comply with the Company's instructions and continue to perform and fully complete all Work that has not been terminated; and
- h.** keep the Company fully informed about all actions taken or intended to be taken as a result of the termination and within ten (10) Days of the written notice, submit an itemized list of all actions taken or intended to be taken, said list to be updated by the EPC Contractor as requested.

**2.** After completing the actions described above, the EPC Contractor may submit a Change Request for a Price Change only. The EPC Contractor shall furnish all information and documentation requested by the Company to substantiate such Change Request

to the Company's full satisfaction. The EPC Contractor's Change Request must be submitted promptly, but not later than ninety (90) Days from the date of termination.

**3.** If the EPC Contract is terminated prior to the EPC Contractor having performed any Work or placed any orders or entered into any agreements with Subcontractors, no payment shall be made to the EPC Contractor. If the EPC Contract is terminated after the EPC Contractor has commenced Work or placed orders or entered into any agreements with Subcontractors, the EPC Contractor shall be reimbursed its actual, necessary, reasonable, and verifiable expenses which may be incurred as a direct result of such termination by means of a Price Change. In no event shall the Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential economic loss due to the termination.

**4.** If the Company elects, at its option, to accept any Work or portion thereof, that is defective, incomplete or otherwise fails to conform to this EPC Contract, the Company shall be entitled to take a credit against the Contract Price. Termination shall not affect the EPC Contractor's warranty obligations for any Work provided under the Contract. The EPC Contractor shall not remove any Work from the Site unless the Company so directs in writing.

**5.** In the event of termination, the EPC Contractor shall make every effort to reduce or otherwise mitigate any expense or damage to the Company. The Company shall be entitled to a credit for any amounts owed to the EPC Contractor for the scrap, salvage, or resale value for Materials affected by the termination which Company elects not to keep. Any Materials affected by the termination which the Company elects to keep shall be provided at cost without payment of profit or sales commission.

**6.** The payment, if any, provided under this Article shall be the EPC Contractor's total and exclusive compensation which shall not exceed the EPC Contract Price. The EPC Contractor's full compliance with the requirements of this Article shall be a condition of receiving any payment hereunder, and the EPC Contractor's failure to comply with these requirements shall constitute a waiver of any claim for termination payments or a Price Change.

#### **ARTICLE 42. EVENTS OF DEFAULT AND TERMINATION FOR CAUSE**

**1.** The Company shall at all times have the right, at its option, to terminate this EPC Contract for cause, in whole or in part, by written notice to the EPC Contractor if (each of the following, an "EPC Contractor Event of Default"):

- a.** the EPC Contractor becomes insolvent, makes a general assignment for the benefit of creditors; files or has filed against it a petition in bankruptcy or fails to pay any of its debts as they become due; is adjudged bankrupt or if its affairs are placed in the hands of a receiver, trustee, or assignee for the benefit of creditors;
- b.** the EPC Contractor refuses or repeatedly fails to perform the Work or provide the Materials in a timely manner;
- c.** the EPC Contractor refuses or repeatedly fails to provide enough properly skilled workers, supervisory personnel or proper Materials;

- d.** the EPC Contractor neglects or abandons the Work;
- e.** the EPC Contractor fails to make prompt payment to any of its Subcontractors;
- f.** the EPC Contractor fails to comply with applicable Law;
- g.** the EPC Contractor is unable to perform the Work, fails to provide adequate assurance of future performance, or fails to adhere to the Project Schedule;
- h.** the EPC Contractor becomes involved in litigation or labor problems which, in the Company's opinion, will delay or adversely affect the Work;
- i.** the EPC Contractor commits a material breach of any provision of this EPC Contract;
- j.** the EPC Contractor fails to achieve Substantial Completion within sixty (60) Days after the Guaranteed Substantial Completion Date;
- k.** the issuer of the Performance LC and/or the Retainage LC, as the case may be, fails or ceases to be an Eligible Bank, and within five (5) Days of such event a replacement Retainage LC and/or the Performance LC meeting the requirements of this EPC Contract is not issued by an Eligible Bank;
- l.** the EPC Contractor fails within thirty (30) Days after receipt of written request by Company to correct or submit a written plan acceptable to Company for the prompt correction of any defective or deficient Work or a plan to recover the Project Schedule;
- m.** any representation or warranty made by the EPC Contractor or in any certificate or financial statement furnished to the Company by the EPC Contractor shall prove to be false or misleading in any material respect as of the time made, confirmed or furnished; or
- n.** the EPC Contractor fails, after being notified thereof by the Company, to comply with any provision of this EPC Contract.

**2.** The termination notice shall state the extent and effective date of the termination for cause. On the effective date of such termination, the EPC Contractor shall promptly perform all the steps set forth in Section 41.1(a)-(h) inclusive.

**3.** In the event of termination for cause or an EPC Contractor Event of Default, the Company shall have the right to take possession of and use the Site and all Work or Materials, including tools, appliances, machinery, and equipment thereon, which shall be provided at cost without payment of any profit or sales commission, notwithstanding that such may belong to or be rented or leased by the EPC Contractor, and finish the Work by whatever

method it may deem expedient. In such case, the EPC Contractor shall not be entitled to receive payment for said use and/or possession. The EPC Contractor shall not remove any Work from the Site unless the Company so directs in writing.

4. The Company shall have the right to take possession of and keep and take title to any Materials located off Site under the EPC Contractor's possession or control that are unique, specially-designed or manufactured for use or incorporation in the Work or which are not readily available on the general market without delay.

5. The Company shall have the right to use any Subcontractor with or without assuming its agreements with the EPC Contractor, and paying it in accordance with the terms of its agreements with the EPC Contractor, or in accordance with such other terms as the Company and Subcontractor may agree to, and to credit such payments against the EPC Contract Price or charge the EPC Contractor therefor upon written demand.

6. In no event shall the Company be liable for unabsorbed overhead or loss of anticipated profit or revenue, or other consequential economic loss due to the termination. If the Company's damages due to the termination hereunder, including the Company's expense of finishing the Work, exceeds the unpaid balance of the EPC Contract Price, the EPC Contractor shall pay the difference to the Company no later than ten (10) Days following written demand.

7. If the Company elects, at its option, to accept any Work or portion thereof, that is defective, incomplete or otherwise fails to conform to this EPC Contract, the Company shall be entitled to a credit against the EPC Contract Price as well as draw the Performance LC and apply any Retainage (including drawing the Retainage LC if one has been posted). Termination shall not affect the EPC Contractor's warranty obligations for any Work provided under this EPC Contract.

8. In the event of termination, the EPC Contractor shall make every effort to reduce or otherwise mitigate any expense or damage to the Company. The Company shall be entitled to a credit for any amounts owed to the EPC Contractor for the scrap, salvage, or resale value for Materials affected by the termination which the Company elects not to keep. Any Materials affected by the termination which the Company elects to keep shall be provided at cost without payment of profit or sales commission.

9. If, after termination for cause, it is subsequently determined for any reason that the termination was not for cause, such termination shall be deemed to be a termination for convenience and the rights and obligations of the Parties shall be as set forth in Article 41 "Termination For Convenience".

10. The payment, if any, provided under this Article shall be the EPC Contractor's total and exclusive compensation which shall not exceed the EPC Contract Price. No such payment shall be made by the Company until the Company has completed, or elects not to complete the Work terminated for cause. The EPC Contractor's full compliance with the requirements of this Article shall be a condition of receiving any payment hereunder, and the EPC Contractor's failure to comply with these requirements shall constitute a waiver of any claim for termination.

## **ARTICLE 43. REPRESENTATIONS**

The EPC Contractor hereby represents and warrants that as of the date hereof:

1. the EPC Contractor has confirmed with the Host that the Host's building is suitable for the installation of the proposed Project, that the Project will not violate any existing rooftop warranty, and the existing roof has an expected remaining life of at least twenty (20) years;

2. it has or will obtain the EPC Contractor Permits;

3. it has thoroughly examined and reviewed with legal counsel this EPC Contract and all applicable Law;

4. it has full experience and proper qualifications to perform the Work and to construct the Project in accordance with the EPC Contract;

5. it has ascertained and is satisfied with: (i) the nature and location of the Work; (ii) the character and accessibility of the Site and its surrounding areas; (iii) the availability of lay down areas for equipment and tools; (iv) the existence of obstacles to construction (including underground utilities); (v) the availability of facilities and utilities; (vi) the location and character of homes, businesses, existing or adjacent work or structures (including without limitation railroad lines, roadways, utility lines and poles); (vii) other public and private rights of way; (viii) the condition of roads, waterways and bridges in the vicinity of the Site, including the conditions affecting shipping and transportation (such as the limitations of bridges and tunnels); (ix) access; (x) disposal, handling and storage of materials; (xi) the conditions, including general, local conditions, labor, safety, weather, water supply, water quality, (xii) the structural integrity and sufficiency of the Host's building and roof; and (xiii) all other matters that might affect its performance of the Work or its costs or the construction of the Project;

6. all services provided and procedures followed by the EPC Contractor hereunder to engineer, design, procure, construct, and test the Project shall be done in a workmanlike manner and in accordance with prudent practices, all applicable Law, and all requirements of this EPC Contract;

7. it is familiar with all necessary facilities for delivering, handling and storing all Equipment and other parts of the Work;

8. it is familiar with all labor conditions and agreements relating to the performance of the Work;

9. it will design the Project so that the useful life thereof may reasonably be expected to exceed twenty five (25) years;

10. it has satisfied itself as to the means of communication with, and access to and through, the Site and any accommodations (including lay down areas) the EPC Contractor may require; and

11. the Law in effect on the date hereof and all Law in existence on the date hereof which by their terms, became or will become effective and applicable to either Party, the Project or the Work after the date hereof, have been considered in the calculation of the EPC Contract Price and shall be reflected in the design of the Project and the Work.

#### **ARTICLE 44. NATURE OF THE COMPANY'S RIGHTS**

1. The rights and remedies of the Company in the EPC Contract are cumulative and in addition to any other rights or remedies to which the Company may be entitled under law or in equity, and the exercise of any such rights or remedies shall not exclude the exercise of any other rights or remedies to which Company may be entitled. Neither the exercise of the Company's rights or remedies, nor the failure to exercise such rights or remedies, shall, in any manner, create any obligation to any third person or entity.

#### **ARTICLE 45. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION**

1. The EPC Contractor does not discriminate against its employees or applicants for employment and is in compliance with all of the laws against discrimination, where applicable, including but not limited to Executive Orders 11141, 11246, 11375, 11458, 11625, 11701, and 11758. The EPC Contractor certifies that the EPC Contractor's facilities are not segregated and that the EPC Contractor complies with the Equal Opportunity Clause (41CFR60-1.4), the Affirmative Action Clause for Handicapped Workers (41CFR60-741.4), and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41CFR60-250.4).

2. Company is committed to increasing the amount of business placed with minority and women-owned firms. The EPC Contractors are encouraged to utilize qualified minority and women Subcontractors wherever possible. When a minority and women-owned firms is utilized, the EPC Contractor shall identify the Subcontractor along with the estimated dollar value of the subcontract.

#### **ARTICLE 46. EMPLOYEE PROTECTION**

The EPC Contractor shall be familiar with Section 210, "Employee Protection," of the Energy Reorganization Act of 1974, 42 USC 5851, as amended; Title 10 of the CFR Section 50.7, "Protection of Employees Who Provide Information"; and 29 CFR Part 24, hereinafter "Whistleblower Provisions." The EPC Contractor shall implement a program and develop procedures to advise all employees that they are entitled and encouraged to raise safety concerns to the EPC Contractor's management, to the Company, without fear of discharge or other discrimination. In the event any allegation is made to the EPC Contractor by an employee of discriminatory acts prohibited by the Whistleblower Provisions or any indication that an employee intends to seek or has sought a remedy under the Whistleblower Provisions before the Department of Labor, the EPC Contractor shall notify the Company both verbally and by written notice within two (2) Days thereof.

**ARTICLE 47. COMPLIANCE WITH WORK PERIODS IN LAND USE AGREEMENTS**

The EPC Contractor warrants that it will perform all Work within the periods specified in the Land Use Agreements. The EPC Contractor shall indemnify and hold harmless the Company against any and all losses, damages, costs, expenses or claims arising out of, related to or in connection with the failure to comply with the foregoing warranty.

**ARTICLE 48. PROPRIETARY INFORMATION**

The Company shall have an irrevocable, nonexclusive, perpetual royalty-free license to use any technology, data, know-how, information, materials, inventions, improvements and discoveries, whether or not patentable or copyrightable, in any process, system, product, or method which is developed, conceived, made, or reduced to practice in the course of rendering Work and embedded in the Work.

**ARTICLE 49. ADVERTISING**

The EPC Contractor or its Subcontractor's, employees, or agents shall not use the Company's or Host's name, photographs, logo, trademark, or other identifying characteristics or that of any of the Company's subsidiaries or affiliates without Company's or Host's prior written approval. EPC Contractor shall not display, install, erect or maintain any advertising or other signage at the Site without the Company's or Host's prior written approval, except as may be required by Law. The EPC Contractor shall not cause to be published any advertisement nor issue any press release regarding the Project without coordinating with the Company at least fifteen (15) Days prior to such publication or release.

**ARTICLE 50. RISK OF LOSS**

1. The EPC Contractor shall have care, custody and control of the Project and the Site until the Substantial Completion Date at which time care, custody and control of the Project and the Site shall pass from the EPC Contractor to the Company or Host in accordance with the Land Use Agreement between the Company and the Host.

2. With the exception of any loss resulting from the intentional conduct or gross negligence of the Company, the EPC Contractor shall bear the risk of loss, and be responsible for, and obligated to replace, repair or reconstruct, all at its expense and as promptly as possible, any portion or all of the Work that is lost, damaged or destroyed (including any damage or loss that has occurred as the result of a Force Majeure Excused Event) prior to the Substantial Completion Date, irrespective of how such loss, damage or destruction shall have occurred. The EPC Contractor shall also bear the risk of loss and be responsible for any damage caused by an EPC Contractor Person between the Substantial Completion Date and Final Acceptance Date, and during the Warranty Period.

**ARTICLE 51. WAIVER**

1. The Company's failure to insist in any one or more instances upon strict performance of any provision of the EPC Contract, or failure or delay to take advantage of any of

its rights or remedies hereunder, or failure to notify the EPC Contractor of any breach, violation, or default, shall not be construed as a waiver by the Company of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by the Company's authorized representative, and only with respect to the particular case expressly covered therein.

2. In the event that the Company receives, accepts, or makes full or partial payment for any goods or services or Work that are defective, unsatisfactory, incomplete, delivered late, not performed on time, or which otherwise fail to conform to the provisions of this EPC Contract, the Company's receipt, acceptance, or payment shall be deemed to be under protest and without prejudice to any of the Company's rights or remedies.

#### **ARTICLE 52. HEADINGS**

The headings assigned to the Articles of this EPC Contract are for convenience only and shall not limit the scope and applicability of the Articles.

#### **ARTICLE 53. GOVERNING LAW, VENUE**

This EPC Contract shall be governed by, and construed in accordance with the laws of the State of New Jersey. Any legal claim, suit, proceeding, or action hereunder shall be brought in a court of competent jurisdiction located in Newark, New Jersey. The Parties agree not to submit any dispute or difference between them to arbitration. By execution and delivery of this EPC Contract, each of the parties hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts. Each of the Parties hereby irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof to it by registered or certified mail, postage prepaid, return receipt requested, to each of the Parties at its address set forth herein. Each of the Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in such respective jurisdictions. To the extent permitted by applicable Law, each of the Parties hereby irrevocably waives all right of trial by jury in any action, proceeding, or counterclaim arising out of or in connection with this EPC Contract or any matter arising hereunder.

#### **ARTICLE 54. SURVIVAL**

All provisions providing for limitation of or protection against loss or liability of the Company, including all licenses, warranties, protections, and indemnities, shall survive either termination, suspension, cancellation or expiration of the EPC Contract. If any of the terms, covenants or conditions hereof or the application of any such term, covenant or condition shall be held invalid or unenforceable as to either Party or as to any circumstance by any court having jurisdiction, the remainder of such terms, covenants or conditions shall not be affected thereby, shall remain in full force and effect and shall continue to be valid and enforceable in any other jurisdiction.

**ARTICLE 55. LIMITATION OF LIABILITY**

1. THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON EPC CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR BREACH OF THIS EPC CONTRACT SHALL, UNDER NO CIRCUMSTANCES, EXCEED THE EPC CONTRACT PRICE, PROVIDED HOWEVER THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY IN THE CASE OF (A) THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF ANY EPC CONTRACTOR PERSON, (B) AN INDEMNIFICATION OBLIGATION ARISING WITH RESPECT TO A THIRD PARTY CLAIM, OR (C) THE VALUE OF ANY INSURANCE PROCEEDS ACTUALLY RECEIVED.

2. The indemnity provisions and insurance coverages to be provided herein shall in no way affect, nor are they intended as a limitation of the EPC Contractor's liability with respect to its performance of the Work. The issuance of a Certificate of Substantial Completion or Certificate of Final Acceptance shall not in any way modify or alter the EPC Contractor's obligations hereunder. No inspection, approval or payment by Company under this EPC Contract shall be construed to be an acceptance of defective material or workmanship, an admission that EPC Contractor performed the Work in accordance with the EPC Contract, or relieve the EPC Contractor of any of its obligations under this EPC Contract.

**ARTICLE 56. NOTICES**

1. All notices to be given herein shall be effective upon receipt and shall be in writing and delivered to the Parties by reputable overnight courier service at the following address (or such other address as may hereafter be designated in writing by a respective Party in accordance with this Article 62) with a facsimile thereof sent to such Party with printed confirmation thereof by the sending party's facsimile machine kept by the sending Party:

a. if to the Company:

80 Park Plaza  
T-8  
Newark, NJ 07102  
Telecopy: (973) 623-6573  
Telephone: (973) 430-7404  
Attention: Vice President Renewables & Energy Solutions

with a copy to:

80 Park Plaza  
T-19  
Newark, NJ 07102  
Telecopy: (973) 643-8385

Telephone: (973) 430-7698  
Attention: Vice President Corporate & Commercial

b. if to the EPC Contractor:

\_\_\_\_\_  
Telephone:  
Facsimile:  
Attention: The EPC Contractor's Project Manager

**ARTICLE 57. CONFIDENTIAL INFORMATION**

1. Any and all information or data, whether in oral, written, or physical form, concerning the Company or any product of the Company's expenditure of time, effort, money or creativity, which is obtained from or provided by the Company to the EPC Contractor, is developed, compiled or prepared by the EPC Contractor for the Company, or is identified by the Company as confidential or proprietary shall be treated and maintained by the EPC Contractor as the Company's confidential and proprietary information and shall not in any manner be used or disclosed, in whole or in part without the Company's prior written permission.

**ARTICLE 58. EPC CONTRACT PRICE**

1. As full consideration to the EPC Contractor for the full and complete performance of the Work and all costs incurred in connection therewith, Company shall pay, and the EPC Contractor accept [\_\_\_\_\_] dollars (\$\_\_\_\_\_) (the "EPC Contract Price") as such sum may be adjusted in accordance with this EPC Contract.

2. If the Company has issued a Change Order, the undisputed cost therefor shall be paid to the EPC Contractor on a percentage completion basis until any Price Change related thereto is resolved and the Company shall pay any such amounts due for such Change Order pursuant to invoices from the EPC Contractor which shall be rendered no more often than monthly. Disputed costs of any directed Change Order shall be retained by the Company pending resolution of any such dispute.

3. The EPC Contract Price shall not be subject to change for any reason except as expressly provided in this EPC Contract. Payment by the Company of the EPC Contract Price shall constitute full and complete compensation to the EPC Contractor for all of the Work to be performed hereunder.

4. The EPC Contractor shall not be entitled to any payment, reimbursement, or other compensation except as specified in this EPC Contract. The EPC Contractor's compensation shall not exceed the dollar amount of the EPC Contract Price plus any additional work authorized by written Change Order executed by the Company.

5. The EPC Contractor shall deliver a written list of the Materials and other components of the Work and the price for each for the Company's tax and accounting matters.

**ARTICLE 59. EPC CONTRACTOR TAXES**

1. The EPC Contract Price includes all the EPC Contractor Taxes and import or other duties. The EPC Contractor shall pay all payroll and other related employment and compensation taxes for the EPC Contractor's employees and all federal, state and other taxes which may be assessed on the EPC Contractor's income from the Work, as well as any and all engineering and business license costs, excise, and other similar taxes which may be assessed on the Work or any equipment including import duty and excise taxes and any sales (including without limitation New Jersey sales taxes), works, use, or value added taxes which may be assessed on the Work (collectively, "EPC Contractor Taxes"). The firm fixed price set forth in this EPC Contract shall include all sales and use taxes, excises, customs and import duties, charges and levies, assessments or other charges of any kind levied by any Governmental Authority on or because of the Work, or on or because of EPC Contractor's income in the performance of this EPC Contract and EPC Contractor shall be responsible for all foreign, U.S. Federal, State, City and other local income, license, net-worth, privilege, personal, gross receipts or any other taxes arising out of or related to the EPC Contract or the performance of the Work.

**ARTICLE 60. PAYMENTS**

1. Not more than once per month during the performance of the Work, the EPC Contractor may submit to the Company a Payment Application for a Milestone Payment upon reaching all the milestones listed in the Milestone Payment Schedule with respect to such Milestone Payment, together with a duly executed Affidavit of Payment and Partial Release of Claims for Payment in the form of Exhibit I with respect to the previous payment made by Company and such documentation as the Company may require to substantiate the EPC Contractor's progress.

2. Within thirty (30) Days after the Company's receipt of a Payment Application, the Company shall determine (a) whether the Work has been done as described by the EPC Contractor; (b) whether the Work performed conforms with the requirements of this EPC Contract; (c) whether the Payment Application has been properly completed with a duly executed Affidavit of Payment and Partial Release of Claims for Payment in the form of Exhibit I with respect to the previous payment made by the Company; and (d) the amount due to the EPC Contractor therefor.

3. The Company shall pay the EPC Contractor within thirty (30) Days after the Company's receipt of a Payment Application the undisputed Payment Application amount less the sum of (a) the Retainage relating to such payment and (b) any amounts withheld under Article 63 of this Agreement.

**ARTICLE 61. RETAINAGE LC**

1. In lieu of cash Retainage, the EPC Contractor may deliver to the Company a Retainage LC issued by an Eligible Bank which is drawable by the Company in New York City and which shall expire no earlier than thirty (30) Days after the Final Acceptance Date. The

face amount of the Retainage LC shall be ten (10%) of the EPC Contract Price. Upon receipt of the Retainage LC, the Company will refrain from withholding (and/or return, as the case may be) Retainage in an amount equal to the available and undrawn amount of the Retainage LC. All costs related to the Retainage LC shall be borne by the EPC Contractor.

## **ARTICLE 62. PAYMENT AND TITLE**

1. The EPC Contractor shall maintain complete, detailed, and accurate records of the Work provided under the EPC Contract, including the dates Work was provided, the dates materials and equipment were delivered to the site, and the dates the last Work, services, materials, or equipment were provided or delivered as applicable. Copies of said records shall be promptly provided to the Company by the EPC Contractor, at no cost or expense to the Company, upon the Company's request. Originals of such records shall be promptly provided for the Company's review, at no cost or expense to the Company, upon the Company's request.

2. Title to all Work and Materials shall pass to Company free and clear of any Lien upon the earlier of (i) delivery thereof to the Site or (ii) the time of payment therefor by Company under the applicable milestone payment, *provided, however*, that such passing of title (a) shall not be deemed to constitute the Company's acceptance of non-conforming Work, including Materials, and (b) shall not alter the risk of loss provisions hereof or the EPC Contractor's responsibility for and obligation to take proper steps and precautions to protect all Materials and other portions of the Work until the Substantial Completion Date.

3. The Company shall be entitled to rely upon the accuracy of any and all documents furnished by the EPC Contractor including, but not limited to: schedules of rates, daily time sheets, invoices, test reports, units of Work, or the like, and the Company's review thereof, if any, shall not operate as an acceptance or in any manner relieve the EPC Contractor from its responsibility for the performance of all the requirements of the EPC Contract. If at any time it shall be determined that the Company has been overcharged under the EPC Contract, the Company shall be entitled to a refund plus interest at the Delayed Payment Rate, setoff, or withholding.

4. The EPC Contractor shall promptly pay each Subcontractor the amount to which such Subcontractor is entitled. If the EPC Contractor fails to make prompt payment to any of its Subcontractors, the Company shall have the option to make future payments to the EPC Contractor in the form of joint checks naming the EPC Contractor and such Subcontractor(s) as joint payees. If the Company elects to use such joint check procedure, the Company may discontinue such practice at its sole discretion. Such joint check procedure shall not create any rights in favor of any person or entity beyond the right of the named payees to payment of the check. Endorsement of such joint check shall release the Company from any liability. At no time shall the Company be under any duty or obligation to issue joint checks. The EPC Contractor shall promptly notify Company of any dispute with, or claim by, any Subcontractor if such exceeds one hundred thousand dollars (\$100,000).

**ARTICLE 63. WITHHOLDING OF PAYMENTS**

1. The Company may withhold payments or deduct and offset from amounts allegedly due the EPC Contractor due to: (a) the EPC Contractor's failure to comply with any warranty or remedy defective Work, including, without limitation, incomplete Punch List items; (b) the EPC Contractor's failure to conform to or perform the EPC Contract; (c) levying of incorrect charges by the EPC Contractor; (d) the EPC Contractor's failure to pay any of its Subcontractors promptly; (e) the EPC Contractor's failure to carry out the Company's instructions; (f) the EPC Contractor's failure to adhere to the Project Schedule or complete the Work within the time required thereby; (g) termination of the EPC Contractor for cause or damage to the Company or its property arising out of the Work; (h) claims or reasonably anticipated claims against the Company or its property or affiliates arising out of the Work; (i) Claims or Liens against the Project, the Site or either Party caused by or arising out of the Work by any EPC Contractor Person; (j) damage to Company or any Subcontractor that results from the EPC Contractor's failure to obtain or maintain insurance required to be maintained by it hereunder; (k) the EPC Contractor's failure to provide, on a timely basis, the documentation required under Part I; (l) the EPC Contractor's failure to pay when due any Liquidated Damages; (m) claims filed by any Subcontractor that have not been paid in accordance with its Subcontract; (n) the EPC Contractor's failure to make proper payment for any materials or labor or other obligations incurred as a result of activities carried out under this EPC Contract; or (o) reasonable evidence that any prior payment (together with the previously requested amounts) exceeds the amount payable with respect to Work actually performed.

2. In the event that any Lien is filed against the Company or the Host or their respective property by any Subcontractor, the Company shall have the right to withhold and pay the amount of the Lien directly to the Lien claimant and set-off and deduct such amount from the amount owed the EPC Contractor.

3. Company shall immediately notify the EPC Contractor of the reason Company is withholding any portion of a payment. Upon receipt of such notice, the EPC Contractor shall promptly take any and all steps available to remedy any condition identified by the Company as the basis for its withholding payment, including the bonding of Liens. The Company shall pay the disputed portion of the Payment Application within ten (10) Days following any agreed upon written resolution of the Company's claims.

**ARTICLE 64. PAYMENT OF THE RETAINAGE**

1. Company shall pay any Retainage not applied to liabilities of the EPC Contractor hereunder to the EPC Contractor within thirty (30) Days after the last to occur of: (a) the Final Acceptance Date; (b) the resolution of all claims hereunder; (c) and execution of the Affidavit of Payment and Final Release by the EPC Contractor and any other evidence the Company shall require that any Lien has been discharged of record.

**ARTICLE 65. PAYMENTS NOT APPROVAL OF WORK**

1. No payment made hereunder shall be considered an approval or acceptance of any Work or constitute a waiver of any claim or right that the Company may have

at that time or thereafter, including claims and rights relating to warranty and indemnification obligations of the EPC Contractor.

**ARTICLE 66. FINAL PAYMENT**

1. The EPC Contractor's acceptance, by endorsement or otherwise, of final payment shall constitute a waiver of any and all claims, including, but not limited to any and all lien rights, claims, or notices of any kind, against the Company or its property.

2. No payment or acceptance, final or otherwise, shall constitute acceptance by the Company of defective or otherwise non-conforming Work or in any way operate to release the EPC Contractor from any obligation under this EPC Contract.

**ARTICLE 67. SUSPENSION OF PAYMENTS**

1. Company shall not be obligated to make payments so long as an EPC Contractor Event of Default exists.

END OF ARTICLES

**Exhibit A**

**Change Request**

**Public Service Electric and Gas Company**

**CHANGE REQUEST**

Change Order No.: \_\_\_\_\_

Change Order Date: \_\_\_\_\_

Reference is made to the Turnkey, Lump Sum, Engineering, Procurement and Construction Contract For a Solar Photovoltaic Project between \_\_\_\_\_ (the "EPC Contractor") and Public Service Electric and Gas Company (the "Project Company"), dated as of \_\_\_\_\_, 2012 (the "Contract"). Capitalized terms not otherwise defined in this Change Order have the same meaning as specified in the Contract.

**Account Code:** \_\_\_\_\_

**Vendor/Contractor/Subcontractor:** \_\_\_\_\_

Items	Description	Costs
	Contract Price Increase:  Reference Documents:	

Original Contract Price: \_\_\_\_\_

Previously approved Price Change Orders: \_\_\_\_\_

Previous Contract Price: \_\_\_\_\_

Amount of this Change Order: \_\_\_\_\_

New Contract Price: \_\_\_\_\_

Original Guaranteed Substantial Completion Date: \_\_\_\_\_

Previously approved Time Change Orders: \_\_\_\_\_

Amount of this Time Change Order: \_\_\_\_\_

New Guaranteed Substantial Completion Date: \_\_\_\_\_

Accepted and agreed this \_\_\_\_ day of \_\_\_\_\_, 2012.

**EPC Contractor**

**Public Service Electric and Gas Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit B**

**Milestone Payment Schedule**

<b><u>Milestone</u></b>	<b><u>Percent of</u></b>	<b><u>Cumulative</u></b>
	<b><u>EPC Contract Price</u></b>	
Down Payment and Mobilization	%	%
Permitting and Licensing Completed	%	%
100% Racking and Inverters Ordered and Paid For	%	%
100% Racking and 50% of Panels Installed	%	%
100% Panels Installed	%	%
Substantial Completion	%	%
Final Acceptance	%	%

**Exhibit C**

**Payment Application**

Date: [\_\_\_\_\_], 2012,

Public Service Electric and Gas Company  
80 Park Plaza  
T-8  
Newark, NJ 07102

Gentlemen:

The undersigned submits this payment application pursuant to Article 60 of the Turnkey Engineering, Procurement and Construction contract between Contractor and Public Service Electric and Gas Company (the "Project Company"), dated as of [\_\_\_\_\_] (the "Contract"). Unless otherwise defined herein, all capitalized terms used herein shall have the meanings assigned to such terms in the Contract. The undersigned states that as of the date hereof:

(a) The following is the current status of the Contract account:

Contract Price \$ \_\_\_\_\_

All Price Changes \$ \_\_\_\_\_

Total Milestone Payments made by Owner \$ \_\_\_\_\_

(less Retainage and any other withheld amounts or adjustments) \$ \_\_\_\_\_

Approximate Unpaid Contract Price \$ \_\_\_\_\_

(b) the information in all documents and materials prepared or signed by the Contractor or any of its officers, agents or employees and submitted to the Project Company in support hereof or in connection with the Facility is, in all material respects, true, correct and complete;

(c) the portion of the Work, as more particularly set forth in an annex A hereto and corresponding to milestone number \_\_\_ in the Milestone Payment of \_\_\_% of the Contract Price minus the applicable Retainage in the amount of \$\_\_\_; and

(d) no materially adverse change in the financial condition of the Contractor has occurred since [insert date of last application for payment] except as has been disclosed in writing in an annex hereto.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of the date first above written.

Contractor

---

Name:

Title:

**Exhibit D**

**Retainage LC**

**IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT**

**DATE OF ISSUANCE:** \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$\_\_\_\_\_), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. "Payment in the amount due of \$\_\_\_\_\_ is due beneficiary from the account party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties."

**OR**

2. "Payment in the amount of \$\_\_\_\_\_ [the entire undrawn amount of the Letter of Credit] is due beneficiary from the account party. Account party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. \_\_\_\_\_."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Amounts due in excess of this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire on \_\_\_\_\_. Failure of the Account Party to extend the expiry date of this Letter of Credit at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce ("ICC") Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New Jersey.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]



Signed and delivered this \_\_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_

Officer's Title: \_\_\_\_\_

For: \_\_\_\_\_

Subscribed and sworn before this  
\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_

**Exhibit F**  
**Site Location**

**Exhibit G**

**Performance LC**

**IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT**

DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ (Location) on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. Payment in the amount due of \$ \_\_\_\_\_ is due Beneficiary from the Account Party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties.

**OR**

2. Payment in the amount of \$ \_\_\_\_\_ [the entire undrawn amount of the Letter of Credit] is due Beneficiary from the Account Party. Account Party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. \_\_\_\_\_."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. In no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire upon the earlier of (a) the close of business on \_\_\_\_\_ and all drafts and accompanying documents must be presented to us on or before that time, or (b) the day that we honor a draw under which the full amount of this letter of credit has been drawn. Failure of the Account Party to extend the expiry date of this Letter of Credit by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce ("ICC") Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]

**Exhibit H**

**Labor Rates and Unit Pricing**

[to be provided by EPC Contractor]

**Exhibit I**

**Affidavit of Payment and Partial Release of Claims**

IN CONSIDERATION of the payment of \$\_\_\_\_\_ received from Public Service Electric and Gas Company (“PSE&G”), the undersigned, \_\_\_\_\_, releases PSE&G from all claims, demands and rights of lien that he/it may have against \_\_\_\_\_ to the extent of the amount shown hereon and previously paid, for all work, labor, materials, machinery, plant or other goods, equipment or services done, performed or furnished as specified below and denoted as “Work Performed”, in connection with the following contract:

Owner: Public Service Electric and Gas Company  
Contractor: \_\_\_\_\_  
Address of Project: \_\_\_\_\_  
Work Performed: \_\_\_\_\_

---

The undersigned waives and releases any claim and right of lien which it may now or hereafter have in connection with said contract, and warrants and agrees that he/it has not and shall not assign any claims for payment or right to perfect a lien against said contract.

The undersigned agrees that all guarantees and warranties required under the terms of the said contract pertaining to the work, labor and materials furnished by the undersigned shall remain in full force and effect in accordance with their terms which shall not be extended nor enlarged hereby.

The undersigned represents that all amounts due from the undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid with respect to the work referenced above to the date of this waiver, or will be paid from these funds; and, that there are no amounts for which the undersigned would be liable under said contract for the work referenced above; and, that all other terms of the relevant subcontract, relating to the work set forth above, have been fully complied with by the undersigned.

The undersigned warrants that it has not been delayed in the performance of its work to date and that it has incurred no extra costs in connection herewith. The undersigned specifically waives, relinquishes and releases any and all claims incurred or alleged in connection with its work to date except only those claims, if any, previously denominated as claims and submitted in writing to \_\_\_\_\_.

The undersigned agrees to indemnify, defend and hold harmless Public Service Electric and Gas Company from any and all losses, claims, damages, expenses, including attorneys’ fees, arising directly or indirectly from (a) any failure of the undersigned to pay in full all sums due its

laborers, subcontractors, material men and suppliers on the project, (b) from any liens against the project or the project monies filed by such laborers, subcontractors, material men or suppliers or (c) from any misrepresentation contained herein.

Total Contract Price: \_\_\_\_\_

Balance Due on Total Contract after above payment: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

State of New Jersey            )  
  ) ss:  
County of \_\_\_\_\_            )

Subscribed and sworn before this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## Exhibit J

### Certificate of Substantial Completion

The undersigned, \_\_\_\_\_ (“EPC Contractor”), does hereby deliver this Certificate of Substantial Completion, complete except for countersignature, to Public Service Electric and Gas Company (“Company”). Terms used and not defined herein shall have the meanings set forth in that certain Turnkey Lump-Sum Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project (“EPC Contract”), dated as of \_\_\_\_\_, 2012, by and between Company and EPC Contractor.

EPC Contractor hereby certifies and represents that the following statements are true as of the date set forth below:

- a. all equipment has been installed in accordance with manufacturers’ requirements and the requirements of this EPC Contract and all applicable pass-through warranties, as identified on Exhibit L attached hereto, have been assigned to the Company;
- b. all Work has been completed to the extent necessary to permit safe and reliable generation and transmission of electrical power in accordance with the Scope of Work and design specifications;
- c. the Punch List has been agreed upon and accepted in writing by the Company;
- d. all Work has been completed in accordance with Law, Land Use Agreements, and all building, electrical and code inspections required by the local electric distribution company or Law have been successfully completed and applicable certifications have been obtained;
- e. all of the following documents to the extent necessary to verify the requirements of this EPC Contract have been transmitted to Company and compiled in a format consistent with this EPC Contract: (i) all vendors’ and other manufacturers’ instructions, tests and certified drawings relating to Materials; (ii) QA/QC, and other test and inspection certificates and reports applicable to the Work; (iii) Specifications and Drawings (current as of such time); (iv) construction turnover packages; and (v) Project operating procedures and manuals, including all applicable system operations and maintenance manuals;
- f. the EPC Contractor has replaced or refilled any consumables and spare parts consumed during commissioning and testing;
- g. all activities in the construction and testing phases, as more particularly described in this EPC Contract, have been successfully completed;

- h.** all Delay Liquidated Damages have been paid in full;
- i.** the Project has successfully passed the Performance Test;
- j.** the medium voltage infrastructure and the grid connection for the Project are mechanically, electrically and functionally complete; the Project is interconnected with the local electric distribution company and is producing electricity; and
- k.** the New Jersey Board of Public Utilities or its designee has certified that the Project is qualified to generate SRECs based on the electrical output of the Project.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2012

**EPC CONTRACTOR**

**ACCEPTED BY COMPANY:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

## Exhibit K

### Certificate of Final Acceptance

The undersigned, \_\_\_\_\_ (“EPC Contractor”), does hereby deliver this Certificate of Final Acceptance, complete except for countersignature, to Public Service Electric and Gas Company (“Company”). Terms used and not defined herein shall have the meanings set forth in that certain Turnkey Lump-Sum Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project (“EPC Contract”), dated as of \_\_\_\_\_, 20\_\_, by and between Company and EPC Contractor.

EPC Contractor hereby certifies and represents that the following statements are true as of the date set forth below:

- a.** the Company has issued a Certificate of Substantial Completion;
- b.** the Site is free of construction debris;
- c.** all items on the Punch List have been completed;
- d.** no Change Requests are pending;
- e.** EPC Contractor has provided six (6) hard copy sets of the final Project as-built documentation including:
  - \*All as-built engineering drawings and specifications
  - \*Vendor Drawings and Data
  - \*Instruction Manuals
  - \*Installation, Operation and Maintenance Manuals
  - \*All Permits with copies of close-out records as required
  - \*Control system software.
  - \*Spare Parts Lists
- f.** EPC Contractor has provided one (1) CD of the electronic as-built documentation, including executable CADD files and “.pdf” versions of all design drawings;
- g.** EPC Contractor has provided six (6) copies of an as-built site survey documenting the Solar Project as-built conditions in relation to the Site, easement areas and right of way areas;

- h.** all Liquidated Damages have been paid in full;
- i.** the Company has received an Affidavit of Payment and Final Release, in the form set forth in Exhibit E from the EPC Contractor;
- j.** the Company has received releases and waivers of all Liens against the Project, the Site, Company and its property from each Subcontractor who performed Work at the Site and such other documentation as Company may reasonably request to establish proof thereof;
- k.** EPC Contractor has completed all Work;
- l.** EPC Contractor has removed all of its construction equipment, material and support personnel from the Site; and
- m.** EPC Contractor has delivered to the Company an irrevocable standby letter of credit or has escrowed funds in accordance with the requirements of Article 20.3.

Executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**EPC CONTRACTOR**

**ACCEPTED BY COMPANY:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Exhibit L**

**Pass-Through Warranties**

[EPC Contractor to deliver pass-thru warranties, insert here]

## Exhibit M

### System Performance Test Procedures

EPC Contractor shall provide the following Performance Guarantees:

#### System Output:

The output of the entire Project shall be \_\_\_\_MW AC, which means (a) the sum of the nameplate AC capacities of the inverters shall be no less than \_\_\_\_ MW, and (b) the DC portion of the Project, which is defined as the sum of the nameplate capacities of the solar modules under Standard Test Conditions, shall not be less than \_\_\_\_ MW (DC.)

#### Guaranteed Acceptance Test Performance Ratio(Guaranteed ATPR):

The Guaranteed ATPR shall be \_\_\_\_% and is defined as follows:

$PR =$	$E_{AC}$
	$\eta_{Plant} * I_{POA} * A_{array}$

Where:

$E_{AC}$  = total AC power produced at the point of the delivery (revenue meter)

$\eta_{Plant}$  = plant module efficiency at Standard Test Conditions

$I_{POA}$  = plane of array irradiance measurement

$A_{array}$  = module total array area

The Guaranteed ATPR shall include all losses including those associated with irradiation, PV modules, module degradation, array mismatches, inverters, inverter power point tracking, wiring, transformers, shading, soiling, degradation prior to Acceptance Test and the like. The only allowable adjustments shall be correction of module performance from actual ambient conditions at the time of the test to Standard Test Conditions.

The System Performance Testing Protocol shall be as follows:

#### **Purpose:**

This a spot test according to the test protocol is intended to serve as a detailed technical guide to the application of the provisions of the testing pursuant to this Exhibit M.

#### **Measuring equipment:**

##### Pyranometers:

(2) Kipp & Zonen CMP22 WMO Secondary Standard pyranometers (2% expected accuracy)

Calibrated yearly provided by NREL if possible, or by the manufacturer, EPC Contractor and approved by Owner. EPC Contractor shall provide test protocol for Owner's review and approval no later than 90 days prior to the planned Acceptance Test.

Datalogger:

Campbell Scientific

CR1000 datalogger

PS100 Battery & power supply

PC400 software

Shortcut software

Laptop computer

USB to 9-pin serial RS 232 cable (Campbell Scientific P/N 17394)

Carrying Case

Back-of-module temperature sensor:

(3) 110PV-L Type E thermocouples

or

SI-111 Infrared radiometer (P/N 19119)

CM230 adjustable (P/N 17908)

Temperature sensor for pyranometer temperature correction:

Campbell Scientific 107-L thermistor sensor or as recommended by pyranometer manufacturer (with CMP22 this is an integral feature of the pyranometer).

Power meter:

ANSI C12.20 Class .2

Pulse output if possible for communication with CR1000 datalogger

**Exhibit N**  
**Permit Responsibility Matrix**

Permit Responsibilities of the Parties:

1. EPC contractor shall obtain all permits, authorizations and approvals associated with the Project including zoning, land use, wetlands, and construction of the project.

*[EPC Contractor to complete the following matrix]*

<u>Name of Permit / Authorization</u>	<u>Agency</u>	<u>Expected Date of Approval</u>

2. PSE&G will be responsible for obtaining approvals from PJM Interconnection LLC necessary for the interconnection of the Project to the electrical grid. PSE&G shall reasonably cooperate with EPC Contractor's responsibilities set forth in No. 1 above.

3. The EPC Contractor shall be responsible for all permits not specifically identified on this Exhibit N.

**Exhibit O**  
**Land Use Agreement**

**Exhibit P**

**Workmanship LC**

**IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT**

DATE OF ISSUANCE: \_\_\_\_\_

[Address]

Re: Credit No. \_\_\_\_\_

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of \_\_\_\_\_ (the "Account Party"), for the aggregate amount not exceeding \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), available to you at sight upon demand at our counters at \_\_\_\_\_ (Location) on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. Payment in the amount due of \$ \_\_\_\_\_ is due Beneficiary from the Account Party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties.

**OR**

2. Payment in the amount of \$ \_\_\_\_\_ [the entire undrawn amount of the Letter of Credit] is due Beneficiary from the Account Party. Account Party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. \_\_\_\_\_."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. In no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire upon the earlier of (a) the close of business on \_\_\_\_\_ and all drafts and accompanying documents must be presented to us on or before that time, or (b) the day that we honor a draw under which the full amount of this letter of credit has been drawn. Failure of the Account Party to extend the expiry date of this Letter of Credit by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce ("ICC") Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]

## **Exhibit Q**

### **EPC Contractor Insurance**

Prior to the start of Work, Contractor shall at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any Work under the Contract the following minimum insurance coverages with carriers acceptable to Company including:

1. Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the Work is to be performed, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
2. Commercial General Liability insurance (occurrence form) providing coverage for premises, bodily injury, property damage, personal injury, advertising injury, if applicable, blanket contractual liability, covering Contractor's obligations under this Contract, products and completed operations for not less than three (3) years from the date the Company accepts the Work, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per project or per location where Work is performed.
3. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by the Contractor in the performance of the Work with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury and property damage.
4. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per project or per location where the Work is performed. This limit applies in excess of each of the coverages set forth above in paragraphs 1 (Employer's Liability), 2 (Commercial General Liability insurance), and 3 (Commercial Automobile Liability insurance), which are scheduled as primary.
5. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the Work involves or includes Contractor handling, transporting, disposing, or performing work or operations with hazardous substances, contaminates, waste, toxic materials, or any potential pollutants. The Company and EPC Contractor agree that they are unaware of any such materials at the time of entering this EPC Contract. If such materials are discovered, and if Company asks EPC Contractor to address them, the cost for EPC Contractor to purchase such insurance coverage shall be the responsibility of Company and shall be provided via Change Order. The EPC Contractor shall not be required to purchase Pollution/Environmental Liability insurance unless and until the parties learn of facts that would suggest that the work involves operations with hazardous substances, contaminates, waste, toxic materials, or any potential pollutants.

6. Professional Liability insurance with a minimum limit of five million dollars (\$5,000,000) per claim where the Work involves or includes Contractor providing or performing design, engineering, consulting, or any professional services.
7. Builder's Risk Insurance for the benefit of Company, Financing Parties (if any), EPC Contractor and all Subcontractors or suppliers performing work at the Site. Such coverage shall be in an amount equal to the full replacement value of the Project and be issued by underwriters reasonably acceptable to Company. The policy shall remain in full force and effect from mobilization to the Site until the Substantial Completion. Coverage shall include but not be limited to coverage against perils typically insured against for similar projects, including damage or loss caused by earth movement, flood, windstorm (each with sublimits as commercially available), functional and acceptance testing, fire and extended coverage and including mechanical breakdown and electrical malfunction, and resultant damage due to error in design, defect in materials or faulty workmanship. EPC Contractor shall obtain a waiver by the insurer of all subrogation rights against all insured parties. Policy Deductible amounts shall be based on a "per occurrence" basis not to exceed \$100,000 and shall be for the account of EPC Contractor.
8. Transit Insurance covering any and all EPC Contractor provided Materials and equipment intended to form a part of the Project while they are in transit (including inland, ocean or air transit) from anywhere in the world, including intermediate storage. Coverage shall attach at the commencement of loading and continue until the completion of offloading at the Project Site and shall be written with a policy limit not less than the value of the largest single cargo shipment. Policy Deductible amounts shall be based on a "per occurrence" basis not to exceed \$50,000 and shall be for the account of EPC Contractor.

General Conditions applicable to insurance coverages.

A. Except for Professional Liability cover, the insurance coverages to be provided by Contractor under this Contract shall not include (i) any "claims made" insurance policies, (ii) any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by Company, and (iii) any restrictions or limitations which are inconsistent with the Company's rights under the Contract.

B. All insurance policies shall provide the following: (i) be primary to any other insurance or self-insurance carried by the Company; (ii) contain standard cross-liability provisions; and (iii) provide for a waiver of all rights of subrogation against the Company by Contractor and its insurers.

C. Company reserves the right at any time, including after the Work has begun, to require Contractor to procure and maintain additional coverages or limits and Contractor shall

furnish such additional insurance or limits. The Company shall reimburse the EPC Contractor for any increase in premium at cost without mark-up.

D. All liability insurance policies shall name the Company and its successors and assigns, as additional insureds and Contractor shall maintain the required coverages, naming the Company as an additional insured, for a period of not less than three (3) years from the date the Company accepts the Work.

E. Prior to the start of any Work, Contractor shall deliver to the Company evidence of the required insurance coverage in the form of Certificates of Insurance acceptable to Company. The Certificates of Insurance and the insurance policies shall provide that coverage afforded under the policies will not be canceled, allowed to expire or the limits in any manner reduced, until at least thirty (30) days prior written notice, ten (10) days written notice in the case of nonpayment of premium, has been given to Company. Company may inspect any or all policies of insurance at any time.

F. All insurance coverages required under the Contract shall be provided by insurance companies acceptable to Company and having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in paragraph 4 above (Evidence of Insurance)).

G. Failure to obtain and maintain the insurance required under the Contract shall constitute a material breach of the Contract and Contractor will be liable for any and all costs, liabilities, and damages, (including attorney's fees, court costs, and settlement expenses) resulting to Company from such breach. In the event Contractor fails to provide the required insurance, Company may at its option, procure said insurance at Contractor's expense.

H. The insurance requirements set forth above are to protect the Company from any and all claims by third parties, including employees of the Contractor, its agents, subcontractors and invitees. Said insurance, however, is in no manner to relieve or release Contractor, its agents, subcontractors and invitees from, or limit their liability as to, any and all obligations assumed under the Contract.