

EPC between REF Owner/Client and
REF Builder/Contractor

August 2018

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

by and between

[Redacted]

and

[Redacted]

as Builder/Contractor

Dated as of _____

Commented [A1]: Joint efforts and or responsibilities are highlighted in yellow, Owner responsibilities are highlighted in turquoise, and Contractor responsibilities are highlighted in green

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ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT (this "**Agreement**"), dated as of [REDACTED] (the "**Effective Date**"), is by and between Renewable Energy Facility ("REF"), a [special purpose entity – LLC as owner], ("**Client**") and [REDACTED], a Limited Liability Company incorporated in Delaware acting as REF builder ("**Contractor**"). Each of Client and Contractor are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Client is developing the solar electric generating facility described on Schedules 1 and 2 hereto (the "**Solar System**") on a licensed portion (the "**Site**") of the real property located at the address set forth on Schedule 2 hereto (the "**Premises**");

WHEREAS, Client wishes to engage Contractor to design, engineer, procure, construct, install, and commission the Solar System as set forth herein; and

WHEREAS, Contractor wishes to accept such engagement and will design, engineer, procure, construct, install, and commission the Solar System as set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual agreements, representations, warranties, and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Contractor agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS; INTERPRETATION

Definitions. The following terms shall, for all purposes of the Contract Documents comprising this Agreement, have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Contract Documents.

"**Agreement**" has the meaning set forth in the preamble.

"**Anti-Windfall Funds**" has the meaning set forth in Section Section 3.8.

"**Changed Condition**" has the meaning set forth in Section Section 3.3.

"**Change Order**" means a written change order signed by each of the Client and Contractor after execution of this Agreement that modifies the scope of Work, the Guaranteed Substantial Completion Date, and/or the Contract Sum.

"**Claim**" has the meaning set forth in Section Section 21.2.

“**Client**” has the meaning set forth in the preamble.

“**Collaterally Assigned Assets**” has the meaning set forth in Section Section 22.8(a).

“**Completion Cost**” has the meaning set forth in Section Section 18.5.

“**Concealed Condition**” has the meaning set forth in Section Section 12.1(b).

“**Construction Documents**” means all of the architectural, mechanical, electrical, and engineering plans, drawings, and specifications, together with all addenda and revisions thereto whether electronic and or hard copy, as issued by Contractor or any Subcontractor as provided in this Agreement.

“**Contract Documents**” means, collectively: (a) this Agreement, together with all exhibits and schedules hereto; (b) the Construction Documents; (c) the Project Schedule; and (d) any Change Orders.

“**Contractor**” has the meaning set forth in the preamble.

“**Contractor’s Supervisors**” has the meaning set forth in Section Section 5.1.

“**Contract Sum**” has the meaning set forth in Section Section 13.1.

“**Day**” means a calendar day unless otherwise specifically defined.

“**Defective Work**” has the meaning set forth in Section Section 19.1.

“**Effective Date**” has the meaning set forth in the preamble.

“**Final Completion**” means that: (a) all conditions for Substantial Completion have been satisfied; (b) all of the Work, including Punchlist Work, has been completed in accordance with the terms hereof; (c) Contractor has obtained and delivered to Client all Utility Approvals; and (d) Contractor has delivered to Client each Solar System Completion Document.

“**Financing Entity**” means any persons, and their permitted successors and assignees, providing funding in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for the Solar System.

“**Force Majeure Event**” means any event or circumstance that prevents or delays the performance of any obligation arising under this Agreement (other than the obligation to pay money when due), but only if such event or circumstance: (a) is not attributable to the fault, negligence, or willful misconduct of, or breach of this Agreement by, the Party that is claiming relief; (b) is outside the reasonable control of the Party that is claiming relief; and (c) could not have been prevented through the exercise of due care and reasonable diligence by the Party that is claiming relief; provided that notwithstanding the foregoing, a Force Majeure Event shall not include: (i) a strike, work stoppage or labor dispute limited only to any one or more of Contractor, its affiliates, or any other third party employed or engaged by Contractor to perform the Work; (ii) mechanical or equipment failure (unless caused by an act of God); (iii) storms and other climatic

or weather conditions that are not abnormally severe for the location of the Site (taking into consideration the time of year); (iv) economic hardship; (v) changes in market conditions; (vi) unavailability of laborers, subcontractors, or vendors (unless due to an act of God); (vii) any failure to obtain or delay in obtaining any permits or other approvals issued or to be issued by any Governmental Authority unless the Party charged with obtaining such permit or approval acted reasonable and duly, timely and properly applied for such permit or approval; or (viii) delays in the delivery of equipment or materials by any Subcontractor or vendor (unless caused by an act of God) or the failure of any such equipment or materials to conform to the quality and specifications set forth in any contract.

“Good Engineering and Operating Practices” means generally accepted and sound independent power producer industry practices, methods and acts applicable to similarly situated U.S. facilities, which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy and expedition. Good Engineering and Operating Practices is not intended to be limited to the optimum practices, methods and acts to the exclusion of all others, but rather to be acceptable practices, methods, and acts generally accepted in similarly situated facilities. With respect to a Solar System, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (a) adequate equipment, materials, resources, and supplies in sufficient reliable volumes and quality, are available to meet the Solar System’s needs;
- (b) sufficient qualified and experienced operating, maintenance and supervisory personnel are available and adequately trained on the systems and other equipment comprising the Solar System to operate, maintain, and supervise the Solar System properly, efficiently and within manufacturer’s guidelines and specifications and are capable of responding to emergency conditions;
- (c) preventive, routine and non-routine maintenance and repairs are performed on a basis consistent with manufacturers’ guidelines and specifications that ensures reliable and safe long-term operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment, tools, and procedures;
- (d) appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning consistent with manufacturers’ guidelines and specifications as designed and to assure that equipment and systems will function properly under normal conditions and emergency conditions; and
- (e) equipment and systems are operated in a manner safe to workers and the environment.

“Governmental Authorities” means the government of the United States of America or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guaranteed Substantial Completion Date**” means _____.

“**Guarantee Period**” means the time during which the Performance Guarantee is in effect under the terms of this Agreement.

“**Hazardous Materials**” means any toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous substance, material or waste that is or becomes regulated by applicable law or any Governmental Authority. The term “Hazardous Materials” includes, but is not limited to, heavy metals, asbestos, and PCBs discovered in or on the Premises.

“**Indemnifying Party**” has the meaning set forth in Section Section 21.2.

“**Indemnitees**” has the meaning set forth in Section Section 21.2.

“**Insurance**” has the meaning set forth in Section Section 21.1(a).

“**Legal Requirements**” shall mean all present and future laws, codes, ordinances, statutes, requirements, orders and regulations of a Governmental Authority, ordinary and extraordinary, foreseen and unforeseen, all industry safety standards and all other standards and regulations referred to elsewhere in the Contract Documents and all directions, requirements, orders and notices of violations thereof.

“**Lien**” has the meaning set forth in Section Section 13.5.

“**Liquidated Damages**” has the meaning set forth in Section Section 6.3.

“**Losses**” has the meaning set forth in Section Section 17.2(a).

“**Major Equipment**” means the photovoltaic modules, mounting Solar System hardware, and the inverter(s), and such other equipment as identified on the “List of Major Equipment” annexed hereto as Schedule 1.

“**Material Supplier**” means a person or entity retained by Contractor to provide, or through which Contractor or any Subcontractor purchases, material and or equipment for the Work.

“**Milestone**” means any of the following events: (a) completion of all Construction Documents; (b) receipt of all permits necessary for the design, construction, and installation of the Solar System; (c) delivery of all Major Equipment to the Premises; and (d) any other events identified on Error! Reference source not found, hereto.

“**MOU**” means that certain Memorandum of Understanding, dated as of _____, by and among Client, Contractor, and _____

“**MW Block**” has the meaning set forth in Section Section 3.7.

“**National Electric Code**” means a regionally adoptable standard for the safe installation of electrical wiring and equipment in the United States. It is part of the National Fire Codes series published by the National Fire Protection Association (NFPA), a private trade association.

“**NYSERDA Contractor**” has the meaning set forth in Section Section 3.7.

“**Others**” means other contractors and or persons at the Premises, who are not employed or retained by Contractor, any Subcontractor, or any Material Supplier.

“**Owner Risk Event**” means any of the following events to the extent such event increases Contractor’s cost of performing the Work or delays the performance of the Work: (a) any change in the Work requested by Client; (b) any failure by Client to perform timely any covenant of Client under this Agreement; (c) any unreasonable interference with Contractor’s performance of the Work caused by Client, Client’s other contractors or representatives, Site Owner, or any of Site Owner’s tenants or invitees (unless, in each case, expressly permitted under this Agreement); (d) any change in law (other than any change in any income tax or gross receipts law) occurring after the date hereof; or (e) any other circumstance or event that is expressly designated herein as an “Owner Risk Event”.

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

“**Pre-Construction Services**” has the meaning set forth in Section Section 11.2.

“**Premises**” has the meaning set forth in the recitals.

“**Progress Report**” has the meaning set forth in Section Section 6.1.

“**Project Schedule**” means construction project schedule, in form and substance reasonably satisfactory to Client, that is prepared by Contractor and approved by Client in accordance with Section Section 6.1, and that is based on, and specifically identifies, the dates on which Contractor shall begin and complete various parts of the Work, including the dates by which Contractor shall complete each Milestone, the Guaranteed Substantial Completion Date, the estimated date of Final Completion, and dates on which information and approvals are required from Client based on timely submissions to Client by Contractor.

“**Punchlist Work**” means any item of Work that: (a) Client reasonably identifies, or Contractor identifies at the time of Substantial Completion, as defective or requiring completion; (b) does not impede Client’s ability to safely operate the Solar System in accordance with good engineering practices and good utility practices; and (c) is not required for the commercial operation of the Solar System or for any approvals (other than Utility Approvals) from any Governmental Authority in connection with the construction, installation, or operation of the Solar System.

“**Qualified Person**” means any person, entity, foundation, or organization that: (a) provides or financially supports access to renewable energy or energy efficiency technologies for low-income and moderate-income individuals on a no-cost, low-cost, or subsidized basis; and (b)

agrees to own and operate the Solar System consistent with the principles set forth in the “Purpose” and “Background” Sections of the MOU.

“**Rebates and Incentives**” has the meaning set forth in Section Section 3.6.

“**Replacement Contractors**” has the meaning set forth in Section Section 18.5.

“**Services**” means the pre-construction, architectural, design, engineering, permitting, and other professional services necessary or incidental to fulfill Contractor’s obligations under the Contract Documents.

“**Site**” has the meaning set forth in the recitals.

“**Site Owner**” means _____.

“**Solar Array Design**” has the meaning set forth in Section Section 11.2(b).

“**Solar System**” has the meaning set forth in the recitals.

“**Solar System Completion Documents**” means the documents required to be delivered to Client at the time of Final Completion as a condition to final payment, all as set forth in Schedule 4 hereto.

“**Standard of Care**” has the meaning set forth in Section Section 3.2.

“**Subcontract**” has the meaning set forth in Section Section 4.3.

“**Subcontractor**” means a person or entity retained or engaged by Contractor as an independent contractor to provide any of the labor, materials, equipment and or services necessary to complete any portion of the Work, together with any subcontractors thereof of any tier.

“**Substantial Completion**” means that: (a) all of the Work (other than Punchlist Work) has been installed, commissioned, and tested pursuant to, and in accordance with, the Construction Documents, and the requirements hereof; (b) Contractor has delivered to Client each Solar System Completion Document that must be delivered as a condition to Substantial Completion, as set forth on Schedule 4 hereto; (c) Contractor has obtained and provided to Client all approvals, licenses, and certificates of occupancy and use (other than the Utility Approvals) that are required by any Governmental Authority in connection with the installation, operation, or use of the Solar System; (d) Contractor has delivered a Notice of Substantial ` to Client; and (e) Client has notified Contractor in writing that Client has accepted such Notice of Substantial Completion, such acceptance not to be unreasonably withheld; provided, however, that if Client has not, within five (5) business days after receiving such Notice of Substantial Completion: (x) notified Contractor in writing that Client has accepted such Notice of Substantial Completion; or (y) provided a written response to Contractor identifying the tasks that Client reasonably determines must still be completed before Substantial Completion can occur, then Client shall be deemed to have accepted such Notice of Substantial Completion.

“**Utility**” means _____.

“**Utility Approvals**” means any and all inspections that the Solar System must pass, and any and all approvals that the Solar System must receive, from the Utility for the Solar System to operate in parallel with, and deliver energy generated by the Solar System to, the Utility’s electrical distribution or transmission system

“**Utility Requirements**” means all requirements of the Utility relating to the Solar System, including those requirements set forth under the Interconnection Agreement, all such requirements to be performed in accordance with Good Engineering and Operating Practices.

“**Warranty Standard**” has the meaning set forth in Section Section 19.1.

“**Work**” means all Services and all work, labor, fabrication, materials, equipment, supplies, accessories, hoisting, scaffolding, packaging, truck freight, delivery, disposal, power hookups, installations, protection, shop drawings, supervision, permits, and or all other services and facilities necessary for the proper construction and completion, operation and maintenance of the Solar System in accordance with, and as are reasonably inferred from, the Contract Documents.

Section 1.1 Interpretation. Terms not expressly defined in the Contract Documents shall be interpreted in accordance with generally established use of such terms within the architectural, engineering, electrical, and construction industries, assuming first class construction. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

ARTICLE 2 SCOPE OF WORK

Section 2.1 Contractor’s Obligation to Perform Work. Contractor shall perform all of the Work on a lump sum, turnkey basis. Without limiting the generality of this Section Section 2.1 or the requirements of any other provision of this Agreement, Contractor shall perform the following services as part of the Work: all planning, programming, design and construction administration for the Solar System, including without limitation all necessary architectural design, engineering, zoning compliance, code compliance, budgeting and scheduling, as well as design for all temporary structures, rigging, hoists, scaffolding and bracing, all consistent with this Agreement and the Construction Documents. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall ensure that the existing elements of any building on which any portion of the Work is to be installed, including the structure of any such existing building, is capable of supporting all of the Work, including all Major Equipment, to be installed on such existing building. Contractor shall perform the Work such that the Work, upon completion, will provide for the development of a project capable of meeting the requirements set forth in this Agreement and the Construction Documents.

Section 2.2 Supervision of the Work. Contractor shall be responsible for the supervision and coordination of the Work, including: (a) all design and engineering related to the Solar System; (b) all construction means, methods, techniques, sequences and procedures utilized, including those specified in the Contract Documents; and (c) coordination among all Subcontractors, Material Suppliers, Client, and Others. When Legal Requirements require that any

portion of the Work is to be performed by licensed professionals, then Contractor shall perform such Work through the performance of qualified persons or entities duly licensed to practice their professions in the locality where the Solar System is to be installed.

Section 2.3 Client Review of Construction Documents. Contractor shall submit all Construction Documents to Client for review and approval. Client shall provide Contractor with any comments that Client may have on any Construction Document within seven (7) Days after receipt of such Construction Document. Client's approval of any Construction Document shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary in the Contract Documents, Client's review and or approval of any Construction Documents or any other element of Contractor's Work shall not be construed as a waiver of Defective Work nor shall any such review or approval excuse Contractor or any Subcontractor of any obligation or liability arising from the Work.

Section 2.4 Work Plan. Contractor will work with Client to design an acceptable installation and Work plan consistent with this Agreement, the Construction Documents, and the Project Schedule. Upon written request of Client, Contractor shall coordinate the services of any consultants, contractors, subcontractors, or suppliers retained by Client in connection with the Solar System with those services provided by Contractor and its Subcontractors.

Section 2.5 Work Areas; Security of Premises. Contractor shall confine operations at the Premises to areas permitted by applicable Legal Requirements, the Contract Documents, and the Site Owner, and shall not unreasonably encumber the Premises with materials or equipment. Contractor shall be responsible for the security of the Site and all materials and equipment located therein; provided that Contractor shall have no liability to Client for any loss or damage to the Site or any equipment or materials located thereon to the extent that Site Owner or any of Site Owner's tenants or invitees accesses the Site without obtaining written permission from Contractor or its Subcontractors.

Section 2.6 Cutting, Fitting, and Patching. Contractor shall be responsible for all cutting, fitting, or patching of existing conditions required to complete the Work or to make its parts fit together properly.

ARTICLE 3 CONTRACTOR'S REPRESENTATIONS AND RESPONSIBILITIES

Section 3.1 Licensing Requirements. Contractor represents and warrants that Contractor and each Subcontractor performing any portion of the Work is, or will be, duly licensed and registered to perform such portion of the Work as and when required in the jurisdiction where the Premises is located and, if applicable, where such Work is being performed. Contractor shall provide Client, within ten (10) Days after the Effective Date or the date on which any Subcontractor agreement is executed, reasonable evidence of the licensing and registration of Contractor or such Subcontractor, respectively. Client will be notified within ten (10) Days of any changes, suspensions, or revocations of licenses held by either Contractor or any Subcontractor to the extent any such revocation would prevent, or have a material adverse effect on, the performance of the Work.

Section 3.2 Standard of Care. Contractor covenants and agrees with Client: (a) to perform the Work, or to cause the performance of the Work to be, consistent with the professional skill and care ordinarily provided by similar, sophisticated engineering, procurement, and construction firms practicing in the same or similar locality under the same or similar circumstances (the “*Standard of Care*”); (b) to cooperate with Client and Others in furthering the commercially reasonable interests of Client with respect to the Solar System; and (c) to perform the Work in a manner that ensures Client’s rights under any equipment or services warranties provided to or for the benefit of Client under this Agreement (whether by assignment or otherwise) are not impaired as a result of any actions or inactions by Contractor or any Subcontractor.

Section 3.3 Examination of Premises. Contractor represents and warrants that: (a) it has visited the Premises, including the Site, and has become familiar with all conditions under which the Work is to be performed, has correlated, and shall continue to correlate, all personal observations with the requirements of the Contract Documents, and shall make any necessary adjustments or corrections resulting therefrom; and (b) the conditions under which the Work will be performed will not hinder Contractor from fulfilling its obligations under this Agreement. To the extent that Client becomes aware of any material change in the conditions of the Site at any time after the date hereof that is not the result of the actions of Contractor, any Subcontractor, or any person for whom Contractor is legally liable (any such change, a “*Changed Condition*”): (x) Client shall notify Contractor in writing of the nature of such Changed Condition and shall afford Contractor another opportunity to visit the Site to assess the impact of such Changed Condition on the Work. Any Changed Condition that increases Contractor’s cost to perform, or delays Contractor’s performance of, the Work shall be an Owner Risk Event.

Section 3.4 Compliance with Legal Requirements; Utility Requirements. Contractor represents, warrants and confirms, that: (a) Contractor shall, and shall cause each Subcontractor to, perform all Work in accordance with all Legal Requirements, Utility Requirements, warranty requirements, and other requirements of any Governmental Authorities that are applicable to the engineering, design, construction, installation and commissioning of the Solar System; and (b) the Solar System, upon Final Completion, will be capable of being operated in accordance with all applicable Legal Requirements, Utility Requirement, warranty requirements, and other requirements of any Governmental Authorities. Contractor shall give any and all notices required and comply with all Legal Requirements, Utility Requirements, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

Section 3.5 Sufficiency of Contract Sum. Contractor represents and warrants to Client that the Contract Sum, as such amount may be modified in accordance herewith, provides sufficient funds for Contractor to complete the Work and to achieve Final Completion in accordance with the terms hereof.

Section 3.6 Rebates and Incentives. Except as defined in Sections Section 3.7 and Section 3.8, Contractor shall, at its own cost and expense, use commercially reasonable efforts to advise the Client about, and to assist the Client in applying for, available rebates, incentives, credits and the like, whether from manufacturers, utilities, governmental entities and or others, arising from or related to the purchase and installation of the Solar System, Major Equipment or other aspects of the Work (“*Rebates and Incentives*”), all of which shall be the sole property of Client.

The Parties agree that any funds received by any Party for workforce development and or job training and or philanthropic support and or other support for pre-development work is specifically excluded from the definition of Rebates and Incentives. It is understood and agreed that Contractor shall have no responsibility for, and shall not be obligated to Client in the event that, any rebate, incentive, credit or the like is not brought to Client's attention, or is not available to or obtained by Client.

Section 3.7 MW Block. The Parties agree that the New York State Megawatt Block incentive (“**MW Block Incentive**”) may or may not be available for the Solar System. Contractor: (a) shall use commercially reasonable efforts to obtain the MW Block Incentive for the Solar System as an accredited New York State Energy Research and Development Authority Contractor (“**NYSERDA Contractor**”); and (b) shall cause the MW Block Incentive, if any is obtained or awarded, to be paid directly to Client or its designee. Any MW Block Incentive shall be for the account of, and for the sole use and benefit of Client and its designee.

Commented [A2]: Applies in New York State only

Section 3.8 Anti-Windfall. The Parties acknowledge that after the Effective Date, new Rebates and Incentives may become available. From the Effective Date and continuing to the last day of the Guarantee Period, the Parties shall jointly use commercially reasonable efforts to obtain such new Rebates and Incentives for the Solar System to benefit their work (the “**Anti-Windfall Funds**”). All Anti-Windfall Funds shall be split evenly between the Parties.

ARTICLE 4 SUBCONTRACTORS; SUPPLIERS

Section 4.1 Subcontractors and Material Suppliers. Subject to Section Section 4.2, Contractor shall hire, retain, contract with, manage, direct, and supervise all Material Suppliers and Subcontractors.

Section 4.2 Selection of Subcontractors. Prior to Contractor engaging any Subcontractor or Material Supplier in connection with the Work, Contractor shall furnish Client with the name, address, credentials, and other relevant information reasonably requested by Client with respect to such person and shall not engage such person if Client has objected to the use of such party in connection with the Solar System within seven (7) Days after the date on which Contractor has furnished all such information to Client; provided that such objection is reasonable and based on objective factors. Unless otherwise stated herein, Contractor shall, within ten (10) Days after Client's written request, furnish the Client with a list of the names and addresses of all such Subcontractor(s) and or Material Suppliers.

Section 4.3 Form of Subcontracts. Any agreement with any Subcontractor or Material Supplier (each, a “**Subcontract**”): (a) shall conform to the applicable payment provisions of this Agreement; and (b) shall be consistent with all applicable Legal Requirements and Utility Requirements. Contractor shall, and shall cause each Subcontractor to, provide lien waivers and releases in favor of Client, in form and substance consistent with Legal Requirements and reasonably satisfactory to Client, for Work performed prior to Client paying to Contractor any progress payments or final payments under this Agreement for such Work. Nothing contained in the Contract Documents shall create any contractual relationship between Client and any

Subcontractor or Material Supplier, nor create any obligation on the part of Client to pay or to see to the payment of any sum to any such Subcontractor or Material Supplier.

Section 4.4 Contractor Compliance with Subcontracts. Contractor shall perform all of its obligations and agreements with each of its Subcontractors and or Material Suppliers and shall fully pay each such person the agreed price for its Work properly completed. In the event that Contractor fails to pay any amount to Subcontractor or Material Supplier as required under its applicable Subcontract, then Client shall have the option (but not the obligation), upon written notice to Contractor, to pay such amount directly to such Subcontractor or Material Supplies directly and to deduct the amount so paid from the Contract Sum.

ARTICLE 5 SUPERVISION; PERFORMANCE OF THE WORK; CONSTRUCTION SERVICES

Section 5.1 Contractor's Supervisors. Contractor's supervisors assigned to the Work ("*Contractor's Supervisors*"), if required under applicable Legal Requirements, shall be duly licensed in the city and state of the Premises, as or if required. Contractor's Supervisors are the only individuals authorized to supervise and direct the performance of the Work on behalf of Contractor and Contractor shall not, except upon the request of, or with the approval of, Client in each instance, which request or approval shall not be unreasonably withheld, make any substitutions to Contractor's Supervisors. In the event that a Contractor's Supervisor shall no longer be employed by Contractor, Contractor shall advise Client of the name and qualifications of a new Contractor's Supervisor and shall obtain Client's agreement in writing, such agreement not to be unreasonably withheld. Contractor's Supervisors shall be authorized to act for Contractor in all matters relating to the Work, and all directions given by them shall be as binding as if given by Contractor. Contractor's Supervisors shall be available for consultation with Client and Others at reasonable times, and shall not accept any other assignment that shall materially affect their attention to the performance of the Work.

Section 5.2 Preservation of Warranties. Contractor shall, and shall cause each of its Subcontractors to, install all Major Equipment in accordance with the manufacturer's specifications for such Major Equipment so as to preserve all manufacturer warranties related to such Major Equipment.

Section 5.3 Installation of Electrical Equipment. Contractor shall, and shall cause each Subcontractor to, install all electrical equipment, conduit and wiring included in the Work in accordance with National Electrical Code standards, as and to the extent required by the authority having jurisdiction in the city, county or state where the Premises are located, all Legal Requirements, and all Utility Requirements.

Section 5.4 Commissioning. Contractor shall commission all Major Equipment after installation in accordance with each piece of Major Equipment's manufacturer's installation instructions, conditions, and warranties, and in accordance with all Legal Requirements and Utility Requirements. Commissioning shall verify that the performance of each piece of Major Equipment is as specified by the Contract Documents, that all components are in proper working order, and that Client understands the general operating principles of the Solar System. Contractor shall, following Substantial Completion, prepare and submit to Client one (1) set of final marked

up as-built drawings that document how the various elements of the Work were actually constructed and installed.

Section 5.5 Maintenance of Premises. Contractor shall keep the portion of the Premises that it occupies in connection with the Work reasonably free from an accumulation of waste material and rubbish on a regular basis and shall, during the course of the Work and at the completion of the Work, remove from such portion of the Premises (including the Site) all rubbish, implements, and surplus materials and leave the building such portion of the Premises (including the Site) broom clean.

Section 5.6 Correction of Defective Work. Contractor shall promptly correct any portion of the Work that is rejected by Client as Defective Work as and to the extent required under Article 19. Contractor shall bear all costs and expenses associated with correcting any such Defective Work, including, without limitation, any and all damage to the Premises caused by the repair and/or removal of the Defective Work and any additional testing and inspections of the replaced Defective Work.

ARTICLE 6 CONTRACT TIME; PROJECT SCHEDULE

Section 6.1 Project Schedule. Contractor shall, within ten (10) Days after the Effective Date, prepare and deliver to the Client a proposed Project Schedule for Client's review and approval. Upon Client's approval of such proposed Project Schedule (such approval not to be unreasonably withheld, delayed, or conditioned), such proposed Project Schedule shall become the Project Schedule. No less frequently than every two (2) weeks Contractor shall provide Client with written updates, in electronic form, on Contractor's progress toward achieving the Milestones, Substantial Completion, and Final Completion (each, a "**Progress Report**"). The Project Schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Client. Contractor shall consult with Client as to the sequence, procedure, and method of carrying out the Work, and Contractor shall schedule the Work and the placing of materials and equipment orders so as not to unreasonably interfere with the operations of Client or Site Owner. Contractor shall complete all portions of the Work necessary to achieve any Milestone as set forth in the Project Schedule.

Section 6.2 Guaranteed Substantial Completion Date. Contractor shall achieve Substantial Completion no later than the Guaranteed Substantial Completion Date, as the Guaranteed Substantial Completion Date may be extended in accordance with Article 15. The Guaranteed Substantial Completion Date shall be extended only by a written Change Order signed by Client and Contractor. Time is of the essence with respect to Contractor's obligations hereunder, including Contractor's obligation to achieve Substantial Completion prior to the Guaranteed Substantial Completion Date.

Section 6.3 Liquidated Damages. If Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date (as such date may be extended in accordance herewith), then Contractor shall pay to Client liquidated damages in the amount of (\$ _____) per Day for each Day after the Guaranteed Substantial Completion Date until Substantial Completion has been achieved (the "**Liquidated Damages**"). Contractor

acknowledges and agrees that a failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date will cause Client to incur costs and damages that are difficult to determine and that the Liquidated Damages described below are a fair and reasonable estimate of the costs and damages that Client is expected to suffer in the event of such a delay. Contractor hereby waives any right to assert that the Liquidated Damages are equivalent to the assessment of a penalty on Contractor. Client may deduct the aforesaid Liquidated Damages from any unpaid amount then or thereafter due to Contractor under this Agreement. Any Liquidated Damages not so deducted from any unpaid amounts due to Contractor shall be immediately due and payable to Client upon demand.

ARTICLE 7 SAFETY

Section 7.1 Safety. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees or other persons on the portion of the Premises occupied by Contractor during the Work (including the Site), including employees of Client, Site Owner, or any Others; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off Premises, under care, custody or control of Contractor, its Subcontractors or Material Suppliers; and (c) the Client's or Site Owner's buildings and other property at the Premises or adjacent thereto. Contractor shall establish, and cause its employees, each Subcontractor, and each such Subcontractor's employees to comply with, **reasonable safety procedures (including without limitation all safety procedures required by Legal Requirements)**. Contractor shall enforce discipline and good order among Subcontractor(s) and Others.

Section 7.2 Reports. **Contractor shall, no later than five (5) Days after their occurrence, notify Client in writing of any accidents arising out of or related to the Work that cause death, personal injury, or property damages.** Such notices shall give full details of the accidents and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported by telephone or messenger to Client no later than twenty-four (24) hours after the occurrence of such accident. If any claim is made by anyone against Contractor or any Subcontractor on account of any accident, Contractor shall report the facts in writing to Client no later than five (5) Days after such claim is made.

ARTICLE 8 RESERVED

ARTICLE 9 PERMITS; UTILITY COSTS

Section 9.1 Permits. **Contractor, at Contractor's sole cost and expense, shall secure all permits and approvals required for the development, construction, or operation of the Solar System, or the development, construction, operation, use, or occupancy of permanent structures or for permanent changes in existing facilities of the Premises to accommodate the Solar System, including but not limited to the building permit. Contractor will provide Client with electronic and or printed copies of all applications for permits and governmental approvals within ten (10) days after they have been made, and shall keep Client informed on a reasonably current basis of the**

progress of such applications, and provide Client with electronic and or printed copies of all permits and approvals obtained.

Section 9.2 Utility Costs. Contractor shall pay all fees due to the Utility in connection with the interconnection of the Solar System to the Utility's electric distribution or transmission system, including application fees. Except as required by the Contract Documents, Contractor shall not be responsible for payment for upgrades or changes to any existing Premises electrical system(s), equipment (other than equipment needed for the Solar System), or survey/research projects that may or may not be required by the Utility, upgrades or changes to Utility-owned equipment, or Utility-supplied electrical service, which shall be the sole responsibility of Client. Contractor shall use commercially reasonable efforts to determine if the Utility will require any such surveys, upgrades or changes to Utility-owned equipment, or Utility-supplied electrical service, and shall advise the Client with respect to same as soon reasonably practical.

**ARTICLE 10
RESERVED**

**ARTICLE 11
PRIOR SERVICES AND PRE-CONSTRUCTION SERVICES**

Section 11.1 Work Performed Prior to Effective Date. Contractor and Client acknowledge that Contractor has provided certain preliminary services with respect to the Solar System prior to the Effective Date and agree that all such services previously performed are deemed to be part of the Work, to be provided in accordance herewith, and are included in the Contract Sum.

Section 11.2 Pre-Construction Services. All services under this Article 11 (the "**Pre-Construction Services**") are included in the Work and are covered by the warranties provided hereunder. Contractor shall perform the following Pre-Construction Services:

(a) An initial structural engineering review will be performed by Contractor and or Contractor's engineer and or engineering Subcontractor to ascertain whether the Site is structurally sound and capable of supporting the Solar System as designed.

(b) The initial design of the solar photovoltaic panels and associated equipment ("**Solar Array Design**") will be developed so as to determine the precise layout. Client will review such layout promptly after receipt from Contractor and shall notify Contractor if such Solar Array Design is acceptable within seven (7) Days after receipt. Notwithstanding anything to the contrary in the Contract Documents, Client's review or approval of the Solar Array Design shall not be construed as a waiver of Defective Work nor shall any such review or approval excuse Contractor or any Subcontractor of any obligation or liability arising from the Work.

(c) An electrical design will be developed and presented to Client based on the approved Solar Array Design. An engineering review will be performed by Contractor, Contractor's engineer, and/or engineering Subcontractors to determine the feasibility of interconnecting the Solar System to the Premises' electrical system.

(d) Contractor shall review the Solar System with the Utility to determine the method for Utility interconnection acceptable to the Utility and shall submit any and all applications that are necessary to interconnect the Solar System to the electric distribution or transmission system of the Utility.

(e) Except as otherwise provided herein, as the requirements for the Work are determined and refined with the development of the Construction Documents, the Project Schedule (except for the Guaranteed Substantial Completion Date) shall be revised in writing as required. All revisions to Project Schedule shall be subject to the Client's review and written approval, which shall not unreasonably be withheld or denied.

Section 11.3 Compensation for Pre-Construction Services. Contractor's compensation for performing the Pre-Construction Services is included in the Contract Sum. Except as expressly provided herein, in the event that Client, in its sole determination, elects not to pursue construction of the Solar System and or terminates this Agreement in accordance with Article 18 herein, Contractor shall not be entitled to any compensation and or reimbursement on account of such Pre-Construction Services except as set forth in Articles Article 13 and Article 18.

ARTICLE 12 CLIENT'S RESPONSIBILITIES

Section 12.1 Condition of the Premises. Client shall disclose to Contractor any and all conditions concerning the Site of which Client actually knows that could materially and adversely affect Contractor's performance of the Work, including the following information, if in its possession:

(a) information describing the physical characteristics of the Site, including surveys, evaluations, legal descriptions, data, or drawings depicting existing conditions or subsurface conditions, and environmental studies, reports and investigations; and

(b) test reports, inspections and other reports dealing with Hazardous Material and or other existing conditions, including structural, electrical, mechanical, and or chemical tests, required by the Contract Documents and or the Legal Requirements.

Client's failure to disclose any information, either unintentionally or because of actual lack of knowledge, shall not form the basis of any claim or liability against Client. Contractor is ultimately responsible for inspecting the Premises and the Site and recognizing any conditions that would hinder or impede the Work. Notwithstanding the foregoing, to the extent: (x) Contractor discovers a hidden or concealed condition at the Site after the date hereof that a reasonably prudent contractor would not have discovered during a routine inspection of the Site prior to the commencement of construction (a "**Concealed Condition**"); and (y) such Concealed Condition hinders or impedes Contractor's performance of the Work, then such Concealed Condition shall be an Owner Risk Event.

Section 12.2 Removal of Site Owner's Equipment. Client, acting through Site Owner, shall be solely responsible for moving any of Site Owner's existing equipment (e.g. satellite dish, vents, fans, HVAC units, etc.) as may be required based on the approved Solar Array Design;

provided that Contractor has identified same for Client at the time of Contractor's submission of the proposed Construction Documents for Client's review and written approval. Upon Client's request, Contractor will provide Client with a written Change Order for the purposes of moving/removing any such equipment if such action materially affects cost of the Work.

Section 12.3 Site Access; Assistance of Site Owner. Client, acting through Site Owner, shall be solely responsible for providing Contractor with access to Site Owner's personnel as and when reasonably necessary for Contractor to complete interconnection of the Solar System with the existing electrical service(s) and or Utility, or other reasonably necessary tasks at the Premises.

ARTICLE 13 CONTRACT SUM; PAYMENTS ON ACCOUNT OF CONTRACT SUM

Section 13.1 Contract Sum. As compensation in full to Contractor for the full and complete performance of the Work and all of Contractor's obligations hereunder, Client shall pay to Contractor, in accordance with this Article 13, a fixed price amount of \$_____ (the "**Contract Sum**"). The Contract Sum includes all amounts due to Contractor for the proper performance and completion of the Work, including all amounts due on account of Subcontractors and or Material Suppliers, all insurance premiums, all overhead and profit, reimbursable expenses, general conditions, contingencies, and other costs of Work. Any costs or expenses of any kind incurred by Contractor, Subcontractor(s), and or Material Suppliers in excess of the Contract Sum (as may be adjusted by Change Order in accordance with Article 15) shall be paid by Contractor and or Subcontractor(s), and or the Material Suppliers without reimbursement by Client. The Contract Sum may be adjusted only by a Change Order duly executed by each of Client and Contractor.

Section 13.2 Payment of Contract Sum. Contractor shall be entitled to receive portions of the Contract Sum only upon the achievement of certain payment milestones set forth in Schedule 5 hereto, and shall submit payment applications for such portions of the Contract Sum in accordance with the schedule set forth in Schedule 5 hereto.

Section 13.3 Compensation for Change Orders. Contractor shall be entitled to compensation for Change Orders as and to the extent set forth in such Change Orders. Contractor shall invoice Client monthly for all amounts due under such Change Orders and Client shall remit payment to Contractor for the undisputed portions of such invoices within thirty (30) Days after receipt of such invoices.

Section 13.4 Failure to Pay.

(a) Interest on Late Payments. If either Party fails to remit any payment when due to the other Party, then, following the other Party's written notice thereof and the non-paying Party's failure to cure such payment default within ten (10) Days of receipt of such notice, such delinquent amounts shall accrue interest at the rate of one-half percent (0.5%) per month, from the beginning of such ten (10) Day period; provided that neither Party shall be obligated to pay any disputed payment or any interest thereon until such disputed payment has been resolved in accordance with the terms of this Agreement.

(b) Suspension for Non-Payment. In the event that: (x) Client fails to make any undisputed payments as and when required by this Agreement; (y) Contractor notifies Client in writing of such failure; and (z) such failure is not remedied by the date that is fifteen (15) Days after Client's receipt of such written notice, then Contractor may, in its sole and absolute discretion, by issuing a written notice to Client, suspend, as of the date such notice is received by Client, Contractor's performance under this Agreement until such undisputed payments are received by Contractor. Any such suspension by Contractor in accordance with this Section 13.4(b) shall not abridge or limit any claim by Contractor for any and all damages to the extent provided under this Agreement or otherwise available to it under applicable law.

Section 13.5 Liens. Notwithstanding the foregoing, if any mechanic's liens or other similar liens or claims (each, a "Lien") are filed or maintained against the Work or the Site Owner's buildings, improvements, or real estate for or on account of the Work, then it shall be the obligation of Contractor to make provisions satisfactory to Client and Site Owner, as applicable, for the satisfaction of such Liens upon Client making any further payments hereunder; provided, however, that in no event may the Client withhold undisputed amounts due to Contractor hereunder in an amount greater than 100% of the aggregate amounts stated in all such Liens. Notwithstanding the foregoing, Contractor shall cause any such Lien to be satisfied or discharged by bond, at Contractor's sole expense, within forty-five (45) Days of the filing of such Lien to the extent that the Client's failure to pay Contractor undisputed amounts in accordance with terms of this Agreement has not caused the imposition of such Lien.

**ARTICLE 14
RESERVED**

**ARTICLE 15
CLAIMS; CHANGE(S) TO SCOPE OF WORK OR SCHEDULE OF WORK**

Section 15.1 Change to the Work. Any and all agreements for changes in the Work between Contractor and Client shall only be effective if made by written Change Order. The Contract Sum shall be adjusted in accordance with Section Section 15.6 to reflect any agreed-upon changes in the Work as set forth in approved Change Orders, and the effect of any Change Order on the Contract Sum and/or Project Schedule shall be indicated in writing in such Change Orders. Contractor shall be entitled to change in the Contract Sum or the Project Schedule, including the Guaranteed Substantial Completion Date, only to the extent set forth in this Article 15.

Section 15.2 Disputes over Change Orders. If Client, at its sole discretion, elects to not approve a Change Order proposed by Contractor, or fails to approve a Change Order proposed by Contractor within ten (10) Days after receipt by Client, then Contractor may elect, at its sole discretion, to settle any difference or dispute through the dispute resolution process in Article 20.

Section 15.3 Relief for Force Majeure Events. Contractor shall be entitled to a Change Order for an extension of the Guaranteed Substantial Completion Date to the extent Contractor can demonstrate that Contractor's completion of the Work was delayed due to a Force Majeure Event. If adverse weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have reasonably anticipated, and had a materially adverse effect on the scheduled

Work. Contractor shall use all reasonable efforts to avoid work stoppages, interruptions, disputes or strikes where reasonably possible and practical and shall at all times maintain labor harmony among all Subcontractors and/or Material Suppliers. Within forty eight (48) hours after Contractor becomes aware, or should have become aware, of any Force Majeure Event, Contractor shall provide the Client with written notice of such Force Majeure Event and the intent to claim such occurrence as a Force Majeure Event, and within ten (10) Days after the commencement of such Force Majeure Event, Contractor shall provide the Client with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Contractor shall be entitled to no change in the Contract Sum or any additional compensation as a result of a Force Majeure Event.

Section 15.4 Relief for Owner Risk Events. Contractor shall be entitled to a Change Order to address any extension of the Guaranteed Substantial Completion Date or any adjustment of the Contract Sum to the extent Contractor can demonstrate that Contractor's completion of the Work was adversely impacted by an Owner Risk Event. Within forty eight (48) hours after Contractor becomes aware, or should have become aware, of any Owner Risk Event, Contractor shall provide the Client with written notice of such Owner Risk Event and the intent to claim relief for such Owner Risk Event, and within ten (10) Days after the occurrence of such Owner Risk Event, Contractor shall provide the Client with notice in the form of a letter describing in detail the particulars of the Owner Risk Event and the impact of such Owner Risk Event on Contractor's performance of the Work.

Section 15.5 Change Orders Final. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, the Contract Documents as thus amended, Contractor's compensation, and any changes to the Project Schedule, including changes to the Guaranteed Substantial Completion Date. Contractor, by executing the Change Order, waives and forever releases any claim against the Client for additional time or compensation for matters relating to or arising out of or resulting from the executed Change Order.

Section 15.6 Compensation for Change Orders. In the case of any Change Order resulting from an Owner Risk Event, Contractor's compensation for such Owner Risk Event, if any, shall be a stipulated sum agreed to by the Parties, or the actual costs incurred by Contractor in connection with such Owner Risk Event plus a fee equal to 7.5% of such costs, which costs shall include any Services required as a result of such Owner Risk Event. The foregoing 7.5% fee shall include all overhead, profit, insurance and general conditions costs. In no event shall the aggregate mark-up on a Change Order exceed the foregoing percentages.

**ARTICLE 16
RESERVED**

**ARTICLE 17
HAZARDOUS MATERIALS**

Section 17.1 Hazardous Materials. The Work to be performed by Contractor pursuant to the Contract Documents, and the compensation to be paid to Contractor pursuant to this Agreement and the Contract Documents, expressly excludes work or service of any nature associated or

connected with the identification, abatement, cleanup, control, or removal of environmentally Hazardous Materials.

Section 17.2 Indemnity.

(a) Client Indemnity. Except for any Losses arising from or related to: (i) the negligent or willful act or omission of Contractor, any Subcontractor, Material Supplier or any other person engaged by Contractor or any Subcontractor or their employees and agents; or (ii) an event for which Contractor is obligated to indemnify Client under clause (b) below, Client shall indemnify and hold Contractor, its officers, directors, shareholders, agents and employees harmless from and against any and all claims, demands, damages or causes of action and associated costs (including Contractor's reasonable attorneys' fees) (collectively, "**Losses**") in any way arising out of the presence, suspected presence, or release of any Hazardous Materials into the air, soil, or any water system or water course, or in connection with any actions taken in connection with respect thereto, or with respect to any actions or proceedings in connection therewith, including but not limited to any action to enforce this indemnity.

(b) Contractor Indemnity. Contractor shall indemnify and hold Client and its officers, directors, shareholders, agents and employees harmless from and against any and all Losses in any way arising out of the presence, suspected presence or release of any Hazardous Materials into the air, soil, or any water system or other course, or in connection with any actions taken in connection with respect thereto, or with respect to any actions or proceedings in connection therewith, including but not limited to any action to enforce this indemnity, to the extent caused by or related to Hazardous Materials brought onto or adjacent to the Premises by Contractor, any Subcontractor, Material Supplier, and or other person engaged by Contractor or any Subcontractor and or their employees and agents.

ARTICLE 18 TERMINATION

Section 18.1 Termination by Client for Convenience. Client shall have the right to terminate this Agreement for its convenience, with or without cause, upon thirty (30) Days' prior written notice to Contractor.

Section 18.2 Termination by Contractor. Contractor may terminate this Agreement if:

(a) Client fails to pay Contractor any undisputed amounts as and when due hereunder and Client does not cure such failure within thirty (30) Days after written notice from Contractor; or

(b) (i) structural upgrades to improvements located on the Site are necessary to accommodate the Solar System on the Site; (ii) Contractor notifies Client thereof in writing, with such written notice describing in reasonable detail the deficiencies in such improvements; and (iii) either: (A) Client fails to commit to Contractor in writing, within thirty (30) Days after receiving the notice described in clause (ii), to cause such structural upgrades to be completed within a reasonable amount of time; or (B) fails to complete such

structural upgrades within the time period identified in the commitment from Client described in clause (A).

Section 18.3 Termination by either Party. Either Party may terminate this Agreement if the other Party fails to perform or observe any material provision of this Agreement (other than the obligation of Client to make payments hereunder) and fails to cure such failure within thirty (30) days after notice from such Party; provided, however, that to the extent such failure is incapable of being cured within such thirty (30) day period through the diligent exercise of all commercially reasonable efforts, and the other Party is diligently pursuing and continues to diligently pursue such cure, then the other Party shall have a reasonable amount of additional time, not to exceed ninety (90) days in the aggregate, to effect such cure.

Section 18.4 Contractor Remedies upon Termination. If this Agreement is terminated by Client under Section Section 18.1 or by Contractor under Section Section 18.2 or Section 18.3, then: (a) Contractor shall be entitled to recover from Client: (i) the costs actually incurred by Contractor in connection with the Work actually performed; (ii) to the extent not included in clause (a)(i), the costs incurred by Contractor for Major Equipment (and any other equipment) purchased by Contractor in connection with the Work; (iii) an amount for Contractor's overhead and profit equal to: (A) the sum of the amounts set forth in clauses (a)(i) and (a)(ii); multiplied by (B) 7.5% and (iv) all reasonable and documented out-of-pocket expenses actually incurred by or charged to Contractor attributable to such termination (including reasonable termination or demobilization charges or expenses actually charged to Contractor by its Subcontractors and any and all reasonable and documented out-of-pocket costs incurred by Contractor in complying with Section Section 18.5); (b) Contractor shall not be liable to Client for any of the Work performed (or not performed) by any person from and after the date of such termination; and (c) Contractor shall be entitled to no compensation (including no damages, profit, or overhead) on any portion of the Work that: (i) is not performed prior to or as a result of any such termination; or (ii) is performed after the effective date of any such termination.

Section 18.5 Client Remedies upon Termination. If this Agreement is terminated by Client under Section Section 18.3 above, then Client may employ one or more qualified persons, firms, or corporations (the "**Replacement Contractors**") to finish the Work by whatever method Client may deem expedient, and may undertake such reasonable expenditures as will best accomplish the timely completion of the Work. Within a reasonable time after the Replacement Contractors have completed the Work, Client shall determine the total costs and expenses reasonably incurred by Client in completing the Work (the "**Completion Cost**"). If the Completion Cost exceeds the unpaid portion of the Contract Sum at the time of the termination of this Agreement, then Contractor shall pay to Client the amount of such excess within thirty (30) days following receipt of Client's written undisputed demand for such payment, which shall be accompanied by reasonable supporting documentation. If the Completion Cost does not exceed the unpaid portion of the Contract Sum at the time of the termination of this Agreement, then Client shall, within thirty (30) Days after completion of the Work, pay to Contractor an amount equal to: (x) the unpaid portion of the Contract Sum at the time of the termination of this Agreement; less (y) the Completion Cost.

Section 18.6 Contractor Obligations upon Termination. If this Agreement is terminated, then, upon Client's written request, Contractor: (a) shall withdraw from the Premises (including

the Site) as promptly as practicable; (b) shall assist the Client in preparing an inventory of all equipment located on the Premises, in storage or in transit; (c) shall assign to Client (or to any Replacement Contractors) such of Contractor's Subcontracts (including warranties), purchase orders, and permits as Client may request in writing, such request being made within thirty (30) days of the date of notice of termination; and (d) shall deliver and make available to Client all information, drawings, specifications documents, patents, licenses of Contractor (whether or not such information, drawings, specifications documents, patents, and licenses are complete) and any components related to the Work reasonably necessary to permit Client to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Client and its agents to use such information in completing the Work and operating the Solar System. Contractor shall remove all materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Client may reasonably direct. For those items of Work that are completed as of the date of termination, Contractor shall provide Client with a warranty for such Work with the same protections and remedies as set forth in Article 19.

ARTICLE 19 WARRANTIES; PERFORMANCE GUARANTEE; LIMITATIONS ON LIABILITY

Section 19.1 Contractor Warranty. Contractor warrants until the date that is one (1) year after the date of Substantial Completion that: (a) the Work will be free from defects, will comply with the requirements of this Agreement and the Construction Documents, and will be performed in accordance with the Good Engineering and Operating Practice, all Legal Requirements, and all Utility Requirements; and (b) all equipment and materials supplied by Contractor as part of the Work will be of proven design, new, unused, and of good quality and workmanship (the "**Warranty Standard**"). If any Work does not comply with the Warranty Standard ("**Defective Work**"), and Client notifies Contractor of such Defective Work on or before the date that is one (1) year after the date of Substantial Completion, then Contractor shall promptly, but in no event later than sixty (60) days after the date on which Client notifies Contractor of such Defective Work, at its sole cost and expense, re-perform, replace, or repair such Defective Work (and any portion of the Solar System that: (x) is damaged as a result of such Defective Work; or (y) must be removed and replaced in connection with such re-performance, replacement, or repair) so that such Defective Work complies with the Warranty Standard.

Section 19.2 Performance Guarantee. Contractor guarantees the performance of the Solar System as and to the extent set forth on Schedule 6 hereto.

Section 19.3 Subcontractor/Supplier Warranties. For all materials and equipment, including all Major Equipment listed on Schedule 1, Contractor shall transfer to Client the manufacturer's warranties, if any, including the warranties specifically described on Schedule 1 that may be assigned to Client and shall assign, and hereby does assign, such warranties to Client (including all warranty and indemnification provisions), and agrees to use commercially reasonable efforts to evidence such assignment to Client. Contractor shall not use equipment or material from any manufacturer without first confirming that such manufacturer will assign to Client, or otherwise issue to Client, a manufacturer warranty against defects in such equipment or material. Notwithstanding any warranties assigned from Contractor to Client as described above, any and all repairs and replacements covered by this Agreement made during the one (1) year period following Substantial Completion pursuant to the warranties described herein shall be at no

cost or expense to Client, regardless of whether such repairs or replacements are required as a result of Defective Work. In addition, Contractor shall promptly respond to any and all of Client's warranty claims made during the one (1) year period following Substantial Completion, and Contractor shall coordinate with any manufacturer to the extent that any manufacturer warranty shall apply with respect to such warranty claims.

Section 19.4 Warranty Exclusions. Contractor's warranty under Section Section 19.1 shall not apply to any damage to any portion of the Work to the extent such damage is caused by: (a) normal wear and tear; (b) improper repairs or alterations of such portion of the Work; (c) Client's or Site Owner's failure to operate or maintain such portion of the Work in material compliance with the reasonable and practical recommendations set forth in the Systems Operation & Maintenance Manual; (d) Client's or Site Owner's failure to operate such portion of the Work in material compliance with the reasonable and practical operating restrictions set forth in the Systems Operation & Maintenance Manual; (e) any negligent act or the willful misconduct of Client, Site Owner, or its representatives, employees or residents; or (f) a Force Majeure Event.

Section 19.5 WAIVER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL THE CONTRACTOR BE LIABLE TO CLIENT FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES, OR DAMAGES FOR DELAY (EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT).

Section 19.6 DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY OR ALL WORK, MATERIALS AND EQUIPMENT SUPPLIED AND OR INSTALLED BY CONTRACTOR, AND ANY EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF CONTRACTOR (WHETHER SUCH LIABILITIES OR OBLIGATIONS WOULD ARISE UNDER THIS AGREEMENT OR OTHERWISE) FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DESIGN, DELIVERY, INSTALLATION, USE OR PERFORMANCE OF THE SOLAR SYSTEM, MATERIALS AND OR EQUIPMENT; PROVIDED, HOWEVER, THAT CONTRACTOR HEREBY WARRANTS THAT ALL WORK UPON COMPLETION THEREOF SHALL BE IN COMPLIANCE WITH ALL LEGAL REQUIREMENTS AND THIS AGREEMENT.

ARTICLE 20 DISPUTE RESOLUTION

Section 20.1 General. In the event of any dispute arising under or in connection with this Agreement, or any of the Contract Documents or any Services or Work performed or not performed hereunder, then the Parties, upon delivery of written notice from any Party to the other Party hereto, agree to meet within five (5) Days after delivery of such written notice, at a time and location mutually agreed to by the Parties to attempt to resolve such dispute. If the Parties are unable to resolve such dispute within ten (10) Days after such meeting, then such dispute shall be decided by litigation in a court of competent jurisdiction located in the City of New York, New York.

Section 20.2 Performance of Services during Dispute. Contractor shall continue to perform the Work during the pendency of any dispute. If Contractor continues to perform in a satisfactory manner, then Client shall continue to make payments on account of all Work not in dispute during such dispute resolution proceedings in accordance with this Agreement. Notwithstanding the foregoing, Contractor shall be under no duty or obligation to perform under this Agreement if Client has purported to terminate the entire Agreement.

ARTICLE 21 INSURANCE; INDEMNITY

Section 21.1 Insurance Requirements.

(a) Insurance. Contractor shall during the performance of the Work, and shall cause each Subcontractor to at all times during the performance of its portion of the Work, to maintain the following insurance ("Insurance") from an insurer with an A.M. Best rating of A-; VII or better that is an admitted incorporated insurer in the jurisdiction where the Premises is located, and is reasonably acceptable to Client:

(i) commercial general liability coverage of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(ii) automobile liability of not less than \$1,000,000 per incident;

(iii) worker's compensation of not less than the greater of: (A) \$1,000,000 per accident/disease; and (B) statutory requirements;

(iv) umbrella liability of \$5,000,000 in the aggregate;

(v) professional liability of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and

(vi) property insurance in the form of an installation floater insuring property to be installed while in transit, at off-site storage, and onsite awaiting installation and after installation until job completion.

(b) Other Requirements. Contractor shall provide Client with endorsements to the commercial general liability policy, automobile liability policy, and umbrella policy, in form and substance satisfactory to Client, that include Client (and such other persons or entities as Client may reasonably designate hereafter) as "Additional Insureds". The Insurance policies required hereunder shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire except upon thirty (30) Days' (or ten (10) Days' in the case of non-payment of premium) prior written notice to Client. Contractor shall provide the Client, within ten (10) Days of the Effective Date, evidence of the Insurance required under this Section Section 21.1. Client will be notified by Contractor within ten (10) Days after any changes, suspensions, or cancellations of any Insurance required under this Section Section 21.1.

(c) Contractor's Insurance Primary. Contractor's Insurance coverage shall be primary insurance with respect to any other insurance or self-insurance programs maintained by Client, any applicable Additional Insureds, or the Site Owner, and such other insurance or self-insurance programs shall be noncontributory.

(d) Damage Caused by Failure to Maintain Insurance. If Client is damaged by the failure of Contractor to purchase or maintain Insurance required hereunder, then Contractor shall bear all reasonable costs (including reasonable attorney's fees and court costs) incurred by Client in connection therewith.

Section 21.2 Mutual Indemnity. To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives ("Indemnitees") from and against any and all claims, demands, suits, liabilities, proceeding, action, causes of action, losses, expenses, damages, fines, penalties, court costs and reasonable attorneys' fees (collectively, ("Claims") arising out of or otherwise relating to: (a) any negligent or willful act or omission of the Indemnifying Party, its directors, officers, employees, agents or contractors or, in the case of the Client, the Site Owner, its employees and/or residents; (b) the breach of any covenants, representations, or warranties contained in this Agreement; (c) violations of Legal Requirements by the Indemnifying Party, any subcontractor or supplier of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; (d) claims, liability, fines, costs or expenses imposed by a Governmental Authority due to the actions or inactions of the Indemnifying Party; provided, however, that if found by a court of law that an Indemnitee has contributed to such injury, damage, fines or penalties, then the indemnification shall be reduced based upon the relative degree of fault of the Indemnifying Party and such Indemnitee. This indemnification, defense and hold harmless obligation shall not be limited by insurance coverages and shall survive the termination or expiration of this Agreement.

Section 21.3 Notice of Indemnity Claims. Each Party shall notify the other Party of any Claims or threatened Claims in respect of which it is or may be entitled to indemnification under this Article 21. Such Notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Claims or threatened Claims.

Section 21.4 Defense of Indemnity Claims.

(a) The Indemnifying Party shall be entitled, in its sole discretion, to assume and control the defense of such Claims, at its expense, with counsel of its selection; provided that: (i) the Indemnifying Party gives prompt Notice of its intention to do so to the applicable Indemnitees and reimburses such Indemnitees for the reasonable costs and expenses incurred by such Indemnitees prior to the assumption by the Indemnifying Party of such defense; and (ii) such counsel is acceptable to such Indemnitees, in the exercise of its reasonable judgment.

(b) Unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnitees and assumes control of the defense of a claim, suit, action, or proceeding in accordance with this Article 21, the Indemnitees shall have the right, but not the obligation, to contest, defend, and litigate, with counsel of its own selection, any Claims by any third party alleged or asserted against the Indemnitees in respect of, resulting from, related to or

arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(c) Following the acknowledgment of the indemnification and the assumption of the defense by the Indemnifying Party, the Indemnitees shall have the right to employ their own counsel and such counsel may participate in such Claims, but the fees and expenses of such counsel shall be at the expense of such Indemnitees, when and as incurred, unless: (i) the Indemnitees shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnitees in the conduct of the defense of such action; (ii) the Indemnitees shall have reasonably concluded that counsel selected by the Indemnifying Party is not acceptable; or (iii) the Indemnitees shall have reasonably concluded and specifically notified the Indemnifying Party that there may be specific defenses available to it that are different from or additional to those available to the Indemnifying Party or that such Claims involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Section 21.5 Survival. Notwithstanding anything to the contrary herein, the duties and obligations imposed on Contractor under this Article 21 shall survive Final Completion hereunder or termination hereof until the expiration of the applicable statute of limitations or repose.

ARTICLE 22 MISCELLANEOUS

Section 22.1 Notices. Any notices or approvals to be given pursuant to the terms and provisions of the Agreement shall be in writing and shall be sufficient if delivered: (a) personally; (b) by email; provided that any notice sent by e-mail must also be sent on the following business day by nationally recognized overnight courier service that provides tracking and proof of receipt of items mailed for next business day delivery; or (iii) by overnight or similar courier service, or by registered or certified mail, postage pre-paid, addressed to the applicable Party at its address set forth below:

If to Client:

If to Contractor: Name
 Address
 Attention: _____, President
 Facsimile: _____
 Email: _____

And also: [Contractor Counsel]

Such notices or approvals shall be deemed to have been served and given when emailed, hand delivered, faxed or when delivered by courier service; or, if mailed, three (3) Days after the date same is deposited by either registered or certified mail, postage prepaid, in a branch of the United

States Post Office, addressed to such Parties as provided above. Either Party may designate, by notice given in the manner provided for herein, a different person and or address for the mailing of notices to it.

Section 22.2 Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the Parties and contains all the covenants and agreements between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 22.3 Amendment; Waiver. No amendment or modification of this Agreement or other Contract Documents shall be effective unless such amendment or modification is in writing and is signed by both Parties. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

Section 22.4 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, AND WITHOUT REFERENCE TO ITS PROVISIONS FOR CONFLICT OF LAWS.

Section 22.5 Third-Party Beneficiaries. Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person other than the Parties hereto.

Section 22.6 Invalidity; Severability. The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

Section 22.7 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their heirs, executors, administrators, representatives, successors and assigns. Neither Party may assign this Agreement, nor any obligations hereunder, without prior written consent of the other Party; provided, however, that Client may, without the consent of Contractor, assign this Agreement: (x) to any Qualified Person acquiring all or substantially all of Client's interest in the Solar System; or (y) to any Financing Entity.

Section 22.8 Financing.

(a) General. Contractor recognizes that Client may wish to: (a) finance or refinance all or a part of its investment in this Agreement or the Solar System; or (b) pledge its interest in this Agreement or the Solar System to a Financing Entity. Contractor also recognizes that one of the preconditions to taking such actions may be Contractor entering into one or more direct agreements with one or more Financing Entities that, among other things, gives to such Financing Entities a right to assume Client's rights and obligations under this Agreement and to cure Client's defaults and breaches hereunder (including extended cure periods). Contractor hereby consents to the granting by Client to any Financing Entity of security interests in this Agreement and the Solar System (the "***Collaterally Assigned Assets***").

(b) Consent to Collateral Assignment. Contractor shall, upon reasonable request, execute such reasonable and customary consents to or acknowledgments of such assignments by Client and other customary matters as it or any Financing Entity reasonably require in connection with the financing of the Solar System, including: (i) allowing such Financing Entity reasonable notice of and opportunity to cure Client's defaults hereunder; (ii) allowing such Financing Entity or its designee to be assigned all of Client's rights hereunder and in such Collaterally Assigned Assets in the event of Client's default hereunder, with the right to reassign such rights to a competent replacement owner; provided that such replacement owner agrees in writing to assume Client's obligations under this Agreement and provides Contractor with reasonable written evidence of its ability to fulfill Client's payment obligations under this Agreement; (iii) agreeing to enter into a reasonable replacement agreement at the request of the Financing Entity if this Agreement is rejected in bankruptcy or is similarly terminated; and (iv) allowing for other customary lender-protective provisions that are not in violation of Legal Requirements.

(c) Cooperation. Contractor shall, on the request of Client, reasonably cooperate with Client and any actual or potential Financing Entity by: (i) providing such information as the Financing Entity may reasonably request in respect of this Agreement and the documents referred to in it and meeting with such Financing Entities at Contractor's offices when reasonably requested; and (ii) permitting the Financing Entity to undertake reasonable review and due diligence of this Agreement and the Contract Documents referred to in this Agreement.

Section 22.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed by initialing each page and signing where appropriate and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of this document by facsimile or other generally accepted electronic means (*i.e.* scan and e-mail) shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signature pages follow]

EPC between REF Owner/Client and
REF Builder/Contractor

August 2018

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
as of the Effective Date.

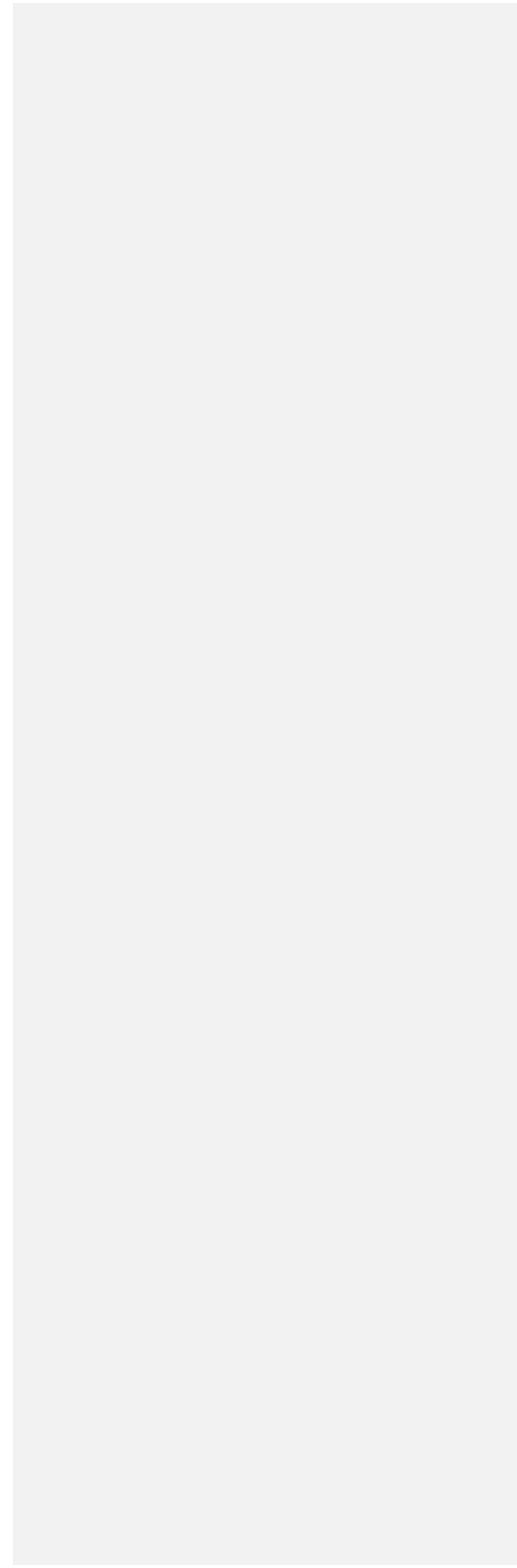
_____ LLC,
as *Contractor*

By: _____
Name: _____
Title: President

REF,
as *Client*

By: _____
Name: _____
Title: _____

[Signature Page for Engineering, Procurement, and Construction Agreement]



SCHEDULE 1
LIST OF MAJOR EQUIPMENT

Major Equipment	Description	Model	Units
Photovoltaic Modules	For the generation of electricity	_____ Solar (type)	
Microinverter	For the conversion of Direct Current electricity from the photovoltaic modules to Alternating Current for use on the Site	_____ (type)	
Mounting Hardware, also known as Racking	For securing the photovoltaic modules to the roof of the Site	_____ Rack _”	

EPC between REF Owner/Client and
REF Builder/Contractor

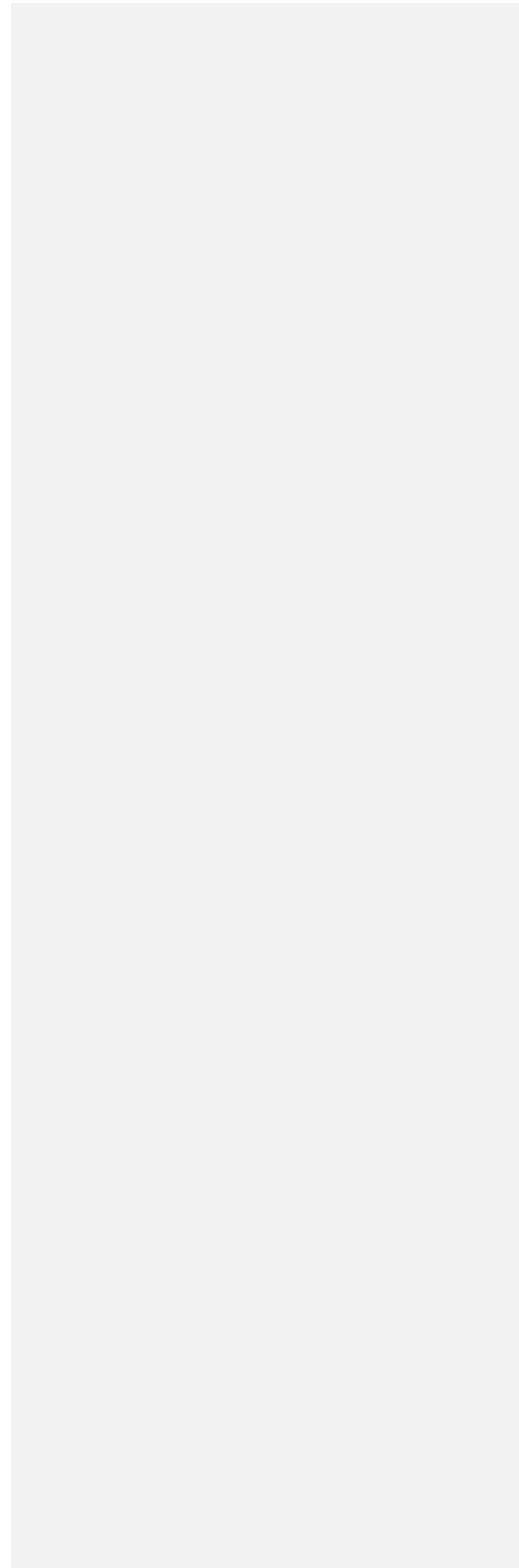
August 2018

SCHEDULE 2
SYSTEM SPECIFICATIONS

Total System Size: kW-DC STC

Premises: The roof of _____, _____, NY

Site: The Solar System is an array to be located at _____, _____, NY



SCHEDULE 3
MILESTONES (AS APPLICABLE)

Item #	Milestone	Description	Milestone Payment
1	Contract Execution	Execution of PPA, EPC, and O&M contract documents	- Payment #1
2	Interconnection Approval to Install	Submission of Application to Utility for interconnection of solar system, with conditional approval for construction granted by Utility	- Payment #2
3	AHJ Approval to Install	Submission of Building and Electrical Applications to AHJ, with Permits issued to Contractor and/or Subcontractors	
4	NYSERDA Incentive Reservation Approval	Submission of Application to NYSERDA granting reservation of incentive funds to Project	
5	Approval for Installation	Approval for system construction granted by AHJ, Utility, and Incentive Reservation by NYSERDA	Payment #3
6	Delivery of Major Equipment to Project Site	Delivery of Major Equipment listed in Schedule 1 to Project Site for installation	Payment #4
7	System Installation & Testing	Installation of all Major Equipment and Balance of System Components, performance of Quality Assurance/Quality Control tests assuring nominal system operation	Payment #5
8	AHJ System Inspection(s)	Inspection of System by AHJ Inspectors, with Inspection Certificate(s) supplied by AHJ or third-party where applicable	
9	Utility System Inspection (if required)	Inspection and Verification Test performed by/in conjunction with Utility	
10	Interconnection Final Permission to Operate	Submission of Final Request for Interconnection and receipt of Final Permission to Operate Letter from Utility	Payment #6
11	AHJ Permit Close Out	Submission of completion documents to AHJ	
12	NYSERDA Incentive Request	Submission of Incentive Request Form to NYSERDA with supporting documentation acquired in Items #10 & 11.	- Payment #7

SCHEDULE 4
PROJECT COMPLETION DOCUMENTS

1. Copies of all permits and permit applications relating to the design, construction, installation, interconnection, and operating of the Solar System.
2. As-built roof plans showing the final placement of all modules, combiner boxes, connections and conduit placement in the Solar System.
3. As-built electrical plans, and elevation drawings showing the final placement of the electrical equipment of the Solar System.
4. All lien waivers and releases from Contractor, each Subcontractor, and each Material Supplier applicable under this Agreement.
5. Copies of all manufacturer warranties relating to the Work and all warranties provided by Subcontractors and Material Suppliers in connection with their performance of the Work.
6. A Systems Operation & Maintenance Manual for the Solar System.
7. The final executed Commissioning Form, including actual temperature, insolation and output of complete array compared to expected output at Standard Test Conditions.

EPC between REF Owner/Client and
REF Builder/Contractor

August 2018

SCHEDULE 5
PAYMENT SCHEDULE

Milestone Payment	Milestone Payable Upon:	Payment %	Amount
Payment #1	EPC Contract Execution	%	\$
Payment #2	Interconnection Approval	%	\$
Payment #3	Approval to Install, "Notice to Proceed" (NTP)	%	\$
Payment #4	Delivery of Major Equipment	%	\$
Payment #5	Installation of All Equipment, QA/QC	%	\$
Payment #6	Interconnection Permission to Operate PTO	%	\$
Payment #7	Final Completion & NYSERDA Submission	%	\$
Total		100%	

Schedule 5

SCHEDULE 6
SYSTEM PERFORMANCE GUARANTEE

1. **Definitions.** As used in this Schedule 6, the following terms shall have the meanings set forth below. All capitalized terms used but not otherwise defined in this Schedule 6 shall have the meaning set forth in the Agreement.

(a) “**Actual Generation**” means, for the Guarantee Period, the Solar System’s cumulative alternating current, or “AC,” electricity production in kWh.

(b) “**Data Acquisition**” or “**DAS**” means the process of measuring an electrical or physical condition such as voltage, current, temperature, or pressure (i.e. monitoring system) including a data logger, cell modem, revenue grade meter, weather station, and software.

(c) “**Guaranteed Level**” means _____ kWh/year.

(d) “**Guarantee Period**” means the six (6) year period commencing on the Commercial Operation Date (under and as defined in the Power Purchase Agreement) and ending on the sixth (6th) anniversary thereof. As an illustration only, if the Commercial Operation Date is November 18, 2016, then the Guarantee Period expires on November 17, 2022.

(e) “**kWh**” means electric energy expressed in kilowatt-hours and measured by multiplying the amount of electric power delivered (measured in kilowatts) by the amount of time over which the electricity was consumed (measured in hours). One kilowatt-hour equals one thousand watt-hours.

(f) “**Performance Guarantee Damages**” has the meaning set forth in Section 4 below.

(g) “**Performance Shortfall**” has the meaning set forth in Section 4 below.

(h) “**Power Purchase Agreement**” means that certain Power Purchase Agreement, dated as of NOT APPLICABLE, by and between Client and Site Owner.

2. **Performance Guarantee.** For the Guarantee Period, Contractor covenants that the Actual Generation of the Solar System shall not be less than the Guaranteed Level. The Guaranteed Level shall be reduced by generation losses caused by any of the following: (a) theft, vandalism, or other third party damage to material portions of the Solar System; (b) intentional damage by the Client, Site Owner and/or any of its employees or residents of the building where the Solar System is located to material portions of the Solar System, or accidental damage caused by the Client’s, Site Owner’s and/or any of its employees’ or residents’ of the Premises where the Solar System is located; (c) Force Majeure Events; (f) any repairs, replacement, removal or maintenance performed by Client or its contractors (other than Contractor) in a manner that is not consistent with Good Engineering and Operating Practices; and (g) power or voltage surge to the extent not caused by Contractor or its Subcontractors. Any such reduction to the Guaranteed Level shall be

calculated on an hourly basis based on the average generation on the applicable day or days when the generation loss occurs.

3. **Reporting of Actual Generation.**

(a) During the Guarantee Period, the Client shall collect energy output data for the Solar System from the Solar System's DAS monitoring system and meters. Client shall provide Contractor with the actual monthly production in each month during which this Agreement is in effect by providing Contractor with read only, real-time access to its DAS monitoring system. The foregoing requirement for Client to provide monthly production data to Contractor shall commence as of the last day of the month commencing after the Commercial Operation Date.

(b) Within thirty (30) days following the end of the Guarantee Period, the Client shall calculate the cumulative Actual Generation and shall send a written notice to Contractor which shall: (i) specify the Guaranteed Level; (ii) the Actual Generation; (iii) include printouts of technical information, computations, data, electronic presentations (but not including native files or live data) used or developed by the Client in determining the Actual Generation; and (iv) include a form of invoice payable by Contractor for the Performance Guarantee Damages, if any, resulting from the calculation of the Performance Guarantee Damages made in accordance with this Schedule 6.

(c) If Client determines that the Solar System is failing to perform in accordance with the Solar System Specifications set forth in Schedule 2 and notifies Contractor thereof in writing, or if the Solar System fails to achieve the Guaranteed Level for any year, then Contractor shall promptly (but in no event later than ten (10) days after receipt of such notice, or forty-five (45) days after the end of the applicable year (if the Guaranteed Level for such year is not met)) visit the Site to inspect the Solar System, including all wiring and interconnections, to determine the reason for such failure. Within five (5) days after such visit, Contractor shall prepare and deliver to Client a written report of its inspection and its conclusions based on such inspection, including the source(s) contributing to the underperformance of the Solar System.

4. **Performance Guarantee Damages.**

(a) If the Actual Generation is less than the Guaranteed Level, then Contractor shall pay to the Client as liquidated damages and not as a penalty, an amount ("Performance Guarantee Damages") equal to: (i) the difference between: (A) the Guaranteed Level; and (B) Actual Generation ("Performance Shortfall"); multiplied by (ii) the lesser of: (A) \$0.____; or (B) the Site Owner's then-current net average cost per kWh of electricity during most recent 12-month period.

(b) The Parties agree that it would be extremely difficult to precisely determine the amount of actual damages that would be suffered by the Client in the event that Contractor fails to achieve the Guaranteed Level. The Parties agree that the Performance Guarantee Damages are a fair and reasonable determination of the amount of actual damages that would be suffered by the Client for Contractor's failure to meet the

Guaranteed Level, and the Parties agree that these liquidated damages do not constitute a penalty.

(c) Performance Guarantee Damages shall be payable within thirty (30) days of the date and verification of the invoice submitted to Contractor.

5. **Contingency for Equipment Failure.** If DAS data is lost due to hardware, communication, or other failure with the Solar System's monitoring system and meters, then, in order to determine lost electrical data, the Client shall read the cumulative electrical data directly from the electrical meter and calculate the electricity generated during any missing interval. In the event that it is not possible to read the electrical meter due to a meter failure or other issue, the Client will reasonably estimate the electrical production during the missing interval by using the actual meteorological data provided by the Solar System's monitoring system or, in the event of a failure for any period of the Solar System's monitoring system to collect actual meteorological data, such other meteorological data which shall reasonably approximate the actual meteorological data that would have been provided by the Solar System's monitoring system.

At any time during the Guarantee Period, Contractor may retain an independent, qualified third party, at its own cost, to verify data collection, calibration, metering, and energy calculations. The Parties commit to work in good faith to resolve any discrepancies or disputes that may arise.