**SOLAR ENGINEERING, PROCUREMENT, AND CONSTRUCTION
SERVICES AGREEMENT**

**BETWEEN**

**{OWNER ENTITY}**

**{OWNER MAILING ADDRESS}**

**AND**

**{CONTRACTOR ENTITY}**

{CONTRACTOR MAILING ADDRESS}

**FOR THE FOLLOWING PROJECT:**

Fixed Tilt Ground Mount System Solar Energy Project
with a nameplate capacity of \_\_\_\_\_\_\_\_\_\_\_ KW DC

[AC capacity, of no less than \_\_\_\_\_\_\_\_\_\_\_ KW AC]
Located at \_\_\_\_\_\_\_\_\_\_\_\_\_Township, \_\_\_\_\_\_\_\_\_\_County, New Jersey

**Dated as of [\_\_\_ \_\_, 20\_\_]**

**SOLAR ENGINEERING, PROCUREMENT, AND CONSTRUCTION
SERVICES AGREEMENT**

THIS SOLAR ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT (this “***Agreement***”) is made and entered into as of this \_\_ day of \_\_\_\_\_\_\_\_ 20\_\_\_\_ (the “***Effective Date***”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Owner***”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Contractor***”). Each of Owner and Contractor is sometimes referred to as a “***Party***” and collectively as the “***Parties***.”

**RECITALS**

1. Owner is developing a solar photovoltaic energy system facility with a Project Capacity as further described, specified and depicted in **Exhibit B** and as further described herein (the “***Project***”) to be located on certain real property and premises more fully described in **Exhibit B** (the “***Site***”).
2. Contractor is in the business of engineering, designing, constructing, and/or installing solar photovoltaic facilities, energy storage systems and the business of commercial roofing.
3. (“***LNTP #1***) if any,.
4. Owner desires to retain Contractor, and Contractor desires to be retained, to perform or cause to be performed all work to engineer, design, construct and install the Project and all the necessary ancillary systems at the Site in accordance with the requirements of this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows:

1. **LNTPs**
2. **Incorporation & Governance**. The Parties acknowledge that the LNTPs have been executed between the Parties and that neither Party is in breach of the LNTPs. The non-conflicting terms and conditions of the LNTPs shall be incorporated by reference into and become part of this Agreement; provided, however:
	1. the Parties acknowledge and agree that the amount of LNTP;
	2. the terms and conditions of this Agreement shall cover, govern, and bind the Contractor related to all work performed under the LNTPs regardless of whether such work was performed prior to or after the execution of this Agreement.
3. **SCOPE OF WORK**
	1. **Work and Materials.** Owner retains Contractor to perform all work for the design, engineering, procurement, construction, installation, interconnection, testing, start-up and commissioning of the Project at the Site, diligently and in a good and workmanlike manner and in accordance with the Scope of Work and all applicable requirements of the Project Agreements, and to provide all Materials, machinery, tools, transportation, administration, personnel, labor and other services, and other items required to complete and deliver to Owner the fully integrated, interconnected, installed, tested, and operational Project, all on a turnkey basis, and otherwise in accordance with this Agreement, the requirements of the manufacturers of all Materials, Laws and applicable standards (including but not limited to those set forth in **Section 2.2.5**) (collectively, including the provision of the Materials, the “***Work***”). Where this Agreement describes the Work in general terms, but not in complete detail, it is understood and agreed that the Work includes any reasonably foreseeable incidental work and materials that are required and necessary to complete the Project in accordance with this Agreement. Contractor shall perform, furnish, undertake, procure and provide (or cause to be performed, furnished, undertaken, procured) the Work, diligently and in a safe, expeditious, good and workmanlike manner and in accordance with Prudent Industry Practices, applicable Law, the latest edition of the National Electric Safety Code (NESC), ANSI C2 and Standard for Electrical Safety in the Workplace, NFPA 70E (except where local regulations are more stringent, in which case local regulations shall govern), all standards and requirements established and required by the Renewable Energy Incentives, Environmental Attributes, and the terms and conditions of this Agreement. Any work performed by Contractor prior to the Effective Date that is necessary for completion of the Project in accordance with this Agreement shall be deemed “Work” hereunder and this Agreement relates back in time and is effective with respect to such Work.
		1. **Site Review**. Contractor has conducted a diligence review of the Site for any and all conditions at the Site (including, as applicable, above surface, and subsurface conditions), engaged consultants and commissioned any reports (including, as applicable, any structural or geotechnical reports) in connection therewith as Contractor reasonably determined to be appropriate and has familiarized itself with the Site, the general and local labor conditions, the adequacy of the Site layout and staging areas and all other matters that might reasonably be expected to affect the execution of the Work in connection with the Project. Contractor shall be responsible for all surveying Work and any other investigative Work, and any structural or geotechnical analysis necessary for the preparation of a plan for preparation of the Premises (the “***Premises Preparation Plan***”) and the performance of the Work. Contractor shall perform all Premises Preparation Work necessary for construction of the Project prior to commencement of construction. To the fullest extent allowed by law, Contractor hereby waives and shall not be entitled to additional time or compensation based on the Site conditions, including any such Site conditions differing from those anticipated by Contractor unless the Contractor the encounters (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents and were not discoverable through the Contractor’s duties pursuant to this Section 2.1.1 or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents and were not discoverable through the Contractor’s duties pursuant to this Section 2.1.1.
		2. **Design and Engineering.** At its sole cost and expense, Contractor shall provide all design and engineering documents to Owner for its review. Contractor shall procure and cause to be provided all design and engineering work, including, but not limited to, preparation of detailed criteria and design of the Project, civil, structural, mechanical, electrical and instrumentation designs, specifications, calculations, working drawings and final drawings (including “as built” drawings currently marked), plans and schedules, sufficient to describe in detail the requirements for construction of the Project in accordance with the requirements of this Agreement. The design shall conform to Prudent Industry Practices, applicable National Electrical Code (“NEC”) standards, local codes, the requirements of the Utility, Renewable Energy Incentive, Environmental Incentive, and applicable Law. The Project shall be designed and installed with due care by qualified (and if required, duly licensed, certified or registered) employees, representatives, agents or contractors of Contractor and shall conform to Prudent Industry Practices and applicable Law. The design shall include utility grade metering and monitoring provisions, including remote “real time” monitoring of system performance and data collection over the internet via the Data Acquisition System (“DAS”), all as in accordance with the requirements of this Agreement. All architects, engineers, and other professionals selected by Contractor shall be duly qualified in accordance with Law to perform the services for which such professionals are hired. Contractor shall at its own expense provide design and engineering services with respect to the Project in a manner that shall be:
			1. Consistent with the actual conditions existing at the Site;
			2. Consistent with the requirements set forth in the Scope of Work;
			3. Consistent in all respects with the requirements of the Project Agreements and the requirements of Utility;
			4. Sufficient, complete, and detailed in all respects necessary to enable the Project to satisfy the requirements of Substantial Completion by the Guaranteed Substantial Completion Date, to pass all System Testing as set forth in **Exhibit E**; to satisfy the requirements of Final Completion by the Guaranteed Final Completion Date, and to satisfy the requirements of all applicable Governmental Authorizations; and
			5. In conformance with Law and Prudent Industry Practices.
	2. **Contractor Obligations.** Without limiting the other provisions of this Agreement, including **Exhibit A**, Contractor shall perform the following as part of the Work:
		1. **General.** Contractor shall perform and execute the provisions of this Agreement as an independent contractor and not as an agent or employee of Owner. Contractor shall be responsible for overall Project Design, procurement, installation, safety and management of the Work. Contractor shall, at its sole cost and expense, procure, deliver, handle, and appropriately store (including but not limited to providing security for the same) all Materials and equipment used in the Work, and all other property owned or leased by Contractor or any of its Subcontractors and used in the Work, each in accordance with manufacturers’ recommendations. Upon the reasonable written request from Owner, Contractor shall facilitate the activities of and reasonably cooperate with Owner in Owner’s efforts to meet the information, notice, communication and coordination requirements of any agreement entered or to be entered into by Owner with third parties in connection with the Project, including but not limited to the Interconnection Agreement and any governmental requirements for Net Metering. Contractor has reviewed the Project Agreements and fully and completely understands the terms thereof and will comply in all respects with the portions of the Project Agreements applicable to the Project and the Work.
		2. **Permits.** At its sole cost and expense,Contractor shall procure all Contractor Permits and Approvals, as further detailed in Exhibit H. Contractor shall give the notices and pay for all fees required to be given or paid to any Governmental Authority in relation to all Contractor Permits and Approvals. Contractor shall provide a copy of all Contractor Permits and Approvals and the related permitted and approved drawings to Owner promptly upon receipt from any Governmental Authority. Wherever possible in accordance with Law, Contractor Permits and Approvals shall be either (i) obtained in the name of Owner (ii) obtained in a manner that allows Owner to exercise any rights granted thereunder or (iii) made fully assignable to Owner without prior consent.
		3. **Inspections; Utility Connection.**
			1. Contractor shall conduct and supervise all building, electrical, civil, environmental, geotechnical, structural, and Utility inspections as required by this Agreement and Law and repair or correct any defect or deficiency identified during such inspections related to the Work and shall promptly provide to Owner all Governmental Authorizations received in conjunction therewith.
			2. Contractor shall design, engineer, procure, construct, install and test the Work and all components thereof, including but not limited to all interconnection facilities that are required to interconnect the Project to the Transmission System in accordance with Law, the requirements of the Project Agreements, the interconnection requirements and the specifications of the Utility, and as otherwise required pursuant to this Agreement.
			3. Contractor is responsible for conducting and supervising all electrical inspections required for the Project as part of the Work or under Law. If for any reason the Project does not receive a satisfactory inspection certificate, Contractor shall repair or correct any defect or deficiency that caused such failed inspection at Contractor’s cost. Upon completion of such repairs or correction, Contractor shall cause such electrical inspection to be re-performed in accordance with this **Section 2.2.3(c).**
			4. With respect to any interconnection work being performed by Utility pursuant or relating to the Interconnection Agreement, it shall be the responsibility of Contractor to pay (as part of the Contract Price and without additional consideration) all charges assessed and incurred by Utility.
		4. **Certification of Completion.**
			1. **Mechanical Completion.** On or before the Day that is three (3) Business Days after the Day on which Contractor believes that Mechanical Completion has been achieved, Contractor shall submit to Owner and Engineer the Mechanical Completion Certificate in the form of **Exhibit I-1** along with all documentation reasonably necessary for Owner and Engineer to determine if Mechanical Completion has been achieved. Owner shall review such certificate for the purpose of determining if Mechanical Completion has been achieved and shall either (i) countersign and deliver to Contractor the Mechanical Completion Certificate to indicate its agreement that Mechanical Completion has been achieved, or (ii) if reasonable cause exists for doing so, notify Contractor in writing of its belief that Mechanical Completion has not been achieved, including but not limited to Owner’s or the Engineer’s reasons for believing the same and advising Contractor of the actions it believes are required to achieve Mechanical Completion. During the period of timing during which Owner is reviewing the Mechanical Completion Certificate (the “**Review Period**”), Contractor shall not perform any further Work or achieve Substantial Completion or Final Completion, but shall be entitled to claim Owner Caused Delay for a Review Period exceeding thirty (30) Days. In the event that Owner determines that Mechanical Completion has not been achieved, Contractor shall remedy the deficiencies identified by Owner and re-submit the Mechanical Completion Certificate, and the process described in this **Section 2.2.4(a)** shall continue in an iterative manner until Mechanical Completion is achieved. The date of achievement of Mechanical Completion (the “***Mechanical Completion Date***”) shall be the date on which the Owner has countersigned and delivered to Contractor the Mechanical Completion Certificate in accordance with this **Section 3.2.4(a)**.
			2. **Substantial Completion.** On or before the Day that is three (3) Business Days after the Day on which Contractor believes that Substantial Completion has been achieved, Contractor shall submit to Owner and the Engineer a Substantial Completion Certificate in the form of **Exhibit I-2** along all other documentation reasonably necessary for Owner and Engineer to determine if Substantial Completion has been achieved. Owner shall review such certificate and documentation for the purpose of determining if Substantial Completion has been achieved and either (i) countersign and deliver to Contractor the Substantial Completion Certificate to indicate its agreement that Substantial Completion has been achieved, or (ii) if reasonable cause exists for doing so, notify Contractor in writing of its belief that Substantial Completion has not been achieved, including but not limited to Owner’s or the Engineer’s reasons for believing the same and advising of the actions it believes are required to achieve Substantial Completion. In the event that Owner determines that Substantial Completion has not been achieved, Contractor shall remedy the deficiencies identified by Owner and re-submit the Substantial Completion Certificate, and the process described in this **Section 2.2.4(b)** shall continue in an iterative manner until Substantial Completion is achieved. The date of achievement of Substantial Completion (the “***Substantial Completion Date***”) shall be the date on which the Owner has countersigned and delivered to Contractor the Substantial Completion Certificate in accordance with this **Section 3.2.4(b)**.
			3. **Punchlist.** Contractor shall notify Owner and Engineer at least five (5) Days in advance of any Punchlist inspection in connection with Substantial or Final Completion. Owner Representative and/or Engineer and an authorized representative of Contractor shall jointly inspect the Project, and the Parties shall jointly prepare a listing of Punchlist Items as a result of such inspection (the “***Punchlist***”). Contactor shall complete all Punchlist Items in accordance with the requirements of this Agreement no later than the date specified for each such Punchlist Item in the Punchlist or, if no date is specified on the Punchlist, no later than thirty (30) days after the Substantial Completion Date. In the event that Contractor fails to complete a Punchlist Item with respect to a particular Project by required deadline, then Owner shall be entitled, at its sole discretion, but not have an obligation, to complete such Punchlist Item and offset its reasonable costs incurred in connection with such work against the milestone payment due upon achievement of Final Completion.
			4. **Final Completion.** When Contractor believes that Final Completion has been achieved, Contractor shall submit to Owner and Engineer a Final Completion Certificate in the form of **Exhibit I-3** along with all documentation reasonably necessary for Owner and Engineer to determine if Final Completion has been achieved. Owner shall either (i) countersign and deliver to Contractor the Final Completion Certificate to indicate its agreement that Final Completion has been achieved, or (ii) if reasonable cause exists for doing so, notify Contractor in writing of its belief that Final Completion has not been achieved, including but not limited to Owner’s or the Engineer’s reasons for believing the same and advising of the actions it believes are required to achieve Final Completion. In the event that Owner determines that Final Completion has not been achieved, Contractor shall remedy the deficiencies identified by Owner and re-submit the Final Completion Certificate, and the process described in this **Section 2.2.4(d)** shall continue in an iterative manner until Final Completion is achieved. The date of achievement of Final Completion (the “***Final Completion Date***”) shall be the date on which Owner has delivered to Contractor a Final Completion Certificate for such Project countersigned by Owner in accordance with this Section 3.2.4(d).
		5. **Standard of Performance.**  Contractor shall cause the Work (including but not limited to the design, engineering, construction, and testing of the Project) to be performed: (a) in compliance with all Laws including but not limited to (i) any noise and dust control ordinances applicable to the construction of the Project, and (ii) any lighting ordinance applicable to the construction of the Project; (b) in accordance with Prudent Industry Practices and the terms and conditions of this Agreement; (c) in a safe, expeditious, good, and workmanlike manner; (d) in accordance with the Utility tariff and rules; (e) in compliance with the applicable requirements of the Project Agreements and all final Owner approved designs and drawings; (f) in compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970, as amended from time to time; and (g) in compliance with the applicable requirements of the Renewable Energy Incentives and Environmental Attributes.
		6. **No Deemed Acceptance.** Contractor acknowledges and agrees that any inspection, testing, or witnessing of any of the Work or tests by Owner, or omission or failure on the part of Owner to inspect any of the Work, shall not be construed as an approval or acceptance of such Work, or as relieving Contractor of its responsibilities pursuant to this Agreement or Law.
	3. **Scheduling and Milestones**.
		1. **Project Schedule.** Contractor shall administer and provide the Work and Materials in accordance with the Project Schedule set forth on **Exhibit D**. Time is of the essence for all periods and dates set forth in this Agreement.
			1. **Mechanical Completion**. Contractor shall achieve Mechanical Completion on or before **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (the “***Guaranteed Mechanical Completion Date***”), subject to extensions of time allowed by this Agreement. The Contractor explicitly agrees that delays in the performance of the Utility shall not entitle the Contractor to extensions to the Guaranteed Mechanical Completion Date.
			2. **Substantial Completion**. Contractor shall achieve Substantial Completion on or before **\_\_\_\_\_\_\_\_\_\_\_\_** (the “***Guaranteed Substantial Completion Date***”), subject to extensions of time allowed by this Agreement.
		2. **Notice of Delay**. If Contractor’s Work is delayed for any reason, Contractor shall (i) immediately (and in no event more than five (5) days afterwards) notify Owner in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption; (ii) immediately exercise all reasonable efforts to minimize the delay; and (iii) immediately notify Owner of the cessation or termination of such delay. If requested by Owner, Contractor shall prepare for Owner’s approval and thereafter implement a remedial action plan designed to accelerate or resequence (at Contractor’s sole expense) the Work in order to minimize any delay.
	4. **Risk of Loss**. Prior to Final Completion, notwithstanding passage of title as provided in **Section 5.1.5**, Contractor shall bear the risk of loss and damage with respect to the Project and shall be obligated to repair, replace, or reconstruct any portion of the Work or Materials comprising the Project that is lost, damaged, or destroyed. For the avoidance of doubt, such risk of loss shall transfer to Owner on the Final Completion Date (subject to applicable warranties).
	5. **Clean-Up.** Contractor shall at all times keep the Site and the Work in a safe and orderly state, as appropriate in accordance with Prudent Industry Practices, to avoid danger to persons on the Site and in the immediate vicinity of the Site, and take such measures as are reasonable in accordance with Prudent Industry Practices to prevent access to the Site of any persons or creatures not entitled to be there. Contractor shall at all times keep the Site reasonably free from waste materials or rubbish caused by its activities.
	6. **Hazardous Materials.**
		1. **Contractor Responsibilities**. Neither Contractor nor its Subcontractors shall bring, use, generate or release any Hazardous Materials on the Site, other than Hazardous Materials to be used by Contractor or any of its Subcontractors on the Site in a manner that both (a) does not violate or contribute to a violation of, or whether individually or on an aggregate basis require reporting or disclosure to any Governmental Authority, Owner or third party under, any Laws, and (b) is consistent with Prudent Industry Practices and is required for Contractor to perform the Work. Contractor shall bear all responsibility and liability for all Hazardous Materials at the Site, whether pre-existing or brought, used, generated or released on the Site by Contractor or its Subcontractors, whether or not such materials are permitted on the Site pursuant to this **Section 2.6**. Contractor shall be solely responsible for the proper and lawful disposal of all such Hazardous Materials at its own expense and without extension of the Project Schedule. If any Hazardous Materials are encountered at the Site by Contractor, Contractor shall immediately report such condition to Owner in writing.
		2. **Records**. Contractor shall minimize the use of Hazardous Materials in performance of the Work. Neither Contractor nor its Subcontractors shall use any Hazardous Materials, whether in their entirety or in such quantities or concentrations, as are prohibited under the Law from being imported into or used in the United States. Contractor shall maintain an updated inventory of, as well as a file of all material safety data sheets relating to, all Hazardous Materials used in connection with performance of the Work at or near the Site or at any construction area related to the Project and shall deliver an update of such file to Owner no less than monthly. Such inventory shall identify quantities and concentrations, location of storage, use and final disposition of such Hazardous Materials.
	7. **Safety.**
		1. **Contractor Responsibilities.**  Contractor shall take all necessary precautions (in accordance with Prudent Industry Practices) to prevent damage, injury or loss resulting from the performance of the Work to:
			1. Owner and all other Persons who may come into contact with the Site or the Work;
			2. any of the Materials whether in storage on or off Site;
			3. the Project; and
			4. any other property on, under, over or adjacent the Site, whether belonging to Owner or to any other Person, that are not designated for removal and disposal in the course of performing the Work.
		2. **Supervision.** Contractor shall supervise and direct the Work using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. Contractor shall have complete responsibility for the Work and for the prevention of injuries to persons and damage to the Work and other property until Owner issues an acknowledgement of Final Completion. Contractor shall in no way be relieved of responsibility by any right of Owner, the Engineer, or any other person to give permission or directions relating to any part of the Work, by any such permissions or directions given, or by failure to give such permission or directions. Contractor shall have the status of and act as an independent contractor, maintaining complete control over its employees and all subcontractors. Contractor shall remove from the Site any employee of Contractor or any subcontractor who, in Owner’s reasonable discretion, is incompetent, insubordinate, careless or disorderly. Contractor shall institute programs to forbid and prevent the possession or use of firearms, alcohol and illegal drugs at the Site and to ensure compliance with applicable Law. Contractor shall institute policies that require the immediate removal and permanent expulsion from the Site, and from any activity associated with the Work being performed at the Site, of any individual person who at any time is found in possession of firearms, alcohol or illegal drugs at the Site. Turnkey Contractor shall remove from the Site any employee of Contractor or any subcontractor who, in Owner’s reasonable discretion, is incompetent, insubordinate, careless or disorderly. If Owner reasonably determines an employee of Contractor or its subcontractors to be under-qualified, disruptive, non-cooperative or otherwise undesirable at the Site, Owner may request the immediate removal and replacement of such employee from the Site. Neither Owner’s request to Contractor to remove an employee, nor Contractor’s removal of an employee following Owner’s request, shall relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under this Agreement. For avoidance of doubt, in the event Owner request removal and replacement of an employee for failure to comply with this Section, Contractor must immediately remove or replace such employee from the Site. Contractor shall cooperate with any separate contractors of Owner on the Site and coordinate its activities with them.
		3. **Safety Program**. Contractor shall initiate and maintain safety precautions and programs in accordance with **Exhibit Q** and in accordance with Prudent Industry Practices and in conformance with Laws or other requirements designed to prevent injury to persons or damage to property on, about or adjacent to the Site. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work. Contractor shall be responsible for all safety precautions and measures on the Site, including the number and qualifications of persons on the Site. Contractor shall use commercially reasonable efforts to avoid the risks of bodily harm to persons or damage to any property. Contractor shall inspect all Work and the Project to discover any conditions which might involve such safety risks and shall be solely responsible for discovery, determination and correction of any such conditions. Industry standard lock-out, tag-out safety procedures shall be followed at all times. Once the PV modules have been mounted, the installation crew must have a minimum of one (1) licensed electrician on Site during all working hours when electrical work is being performed. During all times when electrical work or any Work on a roof is being performed, Contractor shall maintain an installation crew with a minimum of two (2) people working together. Contractor shall be solely responsible for initiating, maintaining and supervising all safety measures and programs in connection with the performance of Work. Contractor shall erect and maintain reasonable safeguards for the protection of workers and the public. Contractor shall exercise reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by or otherwise resulting from performance of the Work.
		4. **Emergency Situations**. In the event of any emergency endangering life or property of which Contractor is aware, Contractor shall immediately take such action as may be necessary to prevent, avoid, or mitigate injury, damage, or loss and shall promptly notify Owner Representative of any such emergency and the related actions taken by Contractor. If Contractor fails to take such action Owner may issue a stop Work order until such emergency is rectified, which order shall not extend the Project Schedule.
	8. **Books and Records**. Contractor shall keep, and shall cause its Subcontractors to keep, such books, records, documents, correspondence and accounts as may be necessary for compliance with its obligations under this Agreement, or for its or Owner’s obligations under applicable Law, Environmental Attributes and Renewable Energy Incentives, and shall maintain such items for a minimum of four (4) years after the Final Completion Date unless otherwise required by such applicable Law, Environmental Attributes, or Renewable Energy Incentives. Upon Owner’s request, Contractor shall provide to Owner copies of such of Contractor’s records related to the Work and Contractor shall provide Owner, at Owner’s cost, with any information regarding quantities and performance of the Work that Owner reasonably deems necessary.
	9. **Coordination and Right to Inspect.** Prior to Final Completion, Contractor shall, at its sole cost and expense, correct any part of the Work or Materials that is defective or otherwise not performed in accordance with the specifications contained within this Agreement, regardless of the time or place of discovery of such errors and regardless of whether the Owner has previously accepted it. In the event that any part of the Work or Materials is discovered to be in a defective condition or otherwise not in conformance with the specifications for such Work or Materials as contained within this Agreement after Final Completion of the Project, correction of such defective condition or other nonconformity shall be governed by the Work Warranty.
	10. **Daily Liquidated Damages.**
		1. **Mechanical Completion.** If Contractor has not achieved Mechanical Completion by the Guaranteed Mechanical Completion Date, Contractor shall pay to Owner, as liquidated damages, the Daily Liquidated Damages Amount of **$\_\_\_\_\_\_\_\_\_\_\_** per Day per MW of the Project Capacity for each Day after the Guaranteed Mechanical Completion Date that Contractor has not achieved Mechanical Completion (“***Daily Mechanical Liquidated Damages***”). In no event shall the payment of Daily Mechanical Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including but not limited to the obligation to satisfy the conditions of Mechanical Completion.
		2. **Substantial Completion.** If Contractor has not achieved Substantial Completion by the Guaranteed Substantial Completion Date, Contractor shall pay to Owner, as liquidated damages, the Daily Liquidated Damages Amount of **$\_\_\_\_\_\_\_\_\_\_\_\_\_** per Day per MW of the Project Capacity for each Day after the Guaranteed Substantial Completion Date that Contractor has not achieved Substantial Completion (“***Daily Liquidated Damages***”). In no event shall the payment of Daily Liquidated Damages excuse Contractor from performance of any of its other obligations hereunder, including but not limited to the obligation to satisfy the conditions of Substantial Completion. Any delay in start-up insurance proceeds resulting from an insured casualty under the Contractor’s Builders Risk policy shall not relieve Contractor of liability for Daily Liquidated Damages; provided, however, delays in Utilities shall entitle the Contractor to extensions of the Substantial Completion Date.
		3. **Daily Liquidated Damages Reasonable Estimate of Loss**. IT IS UNDERSTOOD AND AGREED BY THE PARTIES THAT (A) THE OWNER SHALL BE DAMAGED BY FAILURE OF CONTRACTOR TO MEET THE GUARANTEED SUBSTANTIAL COMPLETION DATE, (B) IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGES RESULTING THEREFROM, (C) THE DAILY LIQUIDATED DAMAGES ARE IN THE NATURE OF LIQUIDATED DAMAGES, AND NOT PENALTIES, AND ARE FAIR AND REASONABLE, AND (D) SUCH PAYMENT IS OWNER’S SOLE REMEDY FOR CONTRACTOR’S FAILURE TO MEET SUCH OBLIGATIONS AND REPRESENTS A REASONABLE ESTIMATE OF FAIR COMPENSATION FOR THE LOSSES THAT MAY REASONABLY BE ANTICIPATED FROM SUCH FAILURE.
	11. **Labor and Personnel.**
		1. **Project Manager**. Contractor shall appoint, for Owner’s approval, a “***Project Manager***” for the Project who shall be experienced in similar work, qualified, and English-speaking. The Project Manager shall be engaged in the Work on a full-time basis, shall have full supervision over the completion of the Project, and shall act as the primary point of contact with the Owner regarding all matters relating to the Project. The Contractor shall not employ a Project Manager to whom the Owner has made reasonable objection. The Project Manager shall be satisfactory to the Owner throughout the duration of the Work to Final Completion and shall not be changed except with the consent of the Owner. Contractor shall expeditiously remove from the Project and replace any Project Manager upon Owner’s reasonable request including any indication, or demonstration or belief that such person does not have sufficient experience performing the type of work required by the Agreement or is incompetent, abusive, dishonest or exhibits disruptive behavior, or is otherwise detrimental to the efficient execution of the Work. All communications from Owner to Project Manager shall be deemed to be given to Contractor.
		2. **Contractor Labor**. Contractor shall provide all labor and personnel required in connection with the Work, all of whom shall be reasonably competent to perform those portions of the Work each will perform on the Project and shall be responsible for payment of prevailing or union wages, if any, required under applicable Law, Project Agreements, Environmental Attributes, or Renewable Energy Incentives.
		3. **Experience**. Contractor shall, unless otherwise agreed by Owner, ensure that it and each First-Tier Subcontractor meets the following criteria:
			1. It has been in business for a minimum of three (3) years;
			2. It has engaged a minimum of ten (10) people on the project installation team;
			3. It has acted as a first-tier subcontractor on, and completed solar generation projects of, at least 2 MWs;
			4. It has previously acted as a first-tier subcontractor on a solar generation project of at least the same size as currently contemplated;
			5. It has previously completed a solar generation project in the State in which the Project is located; It has access to capital, through either cash on hand or undrawn lines of credit, equal to or in excess of fifty percent (50%) of the Subcontractor’s contract price; and
			6. It has agreed to provide a 2-year workmanship warranty on its work, which warranty is fully assignable at no additional cost to Owner.
	12. **Ownership and Use of Drawings and Design Documents.**  All plans, specifications, schedules, drawings, models and other documents furnished by Contractor in the course of Contractor’s performance under this Agreement, whether developed or acquired by or for Contractor, shall be furnished in writing and in appropriate electronic form and shall be the property of Owner, provided that (A) Owner pays Contractor as required by the Agreement, and (B) Owner may use such plans, etc., only for the construction, operation, and modification of the Project for which they were prepared and not for any other facility. Contractor acknowledges and agrees that all such documents may be pledged as collateral to secure financing for the construction of the Project.
4. **CONTRACT PRICE AND PAYMENTS**
	1. **Contract Price**. Subject to the Guaranteed Maximum Price, the Owner shall pay the Contractor the Contract Price in current funds for the Contractor’s performance of the Work. The “***Contract Price***” is defined as the Cost of the Work (as defined in **Exhibit R**), plus the Contractor’s Fee (as defined in **Section 3.1.1**), subject to the Guaranteed Maximum Price, (as defined in **Section 3.1.2**). Except with respect to any additions or deductions relating to authorized Change Orders and as otherwise provided in this Agreement, the Contract Price shall not be increased or decreased for any reason under this Agreement
		1. **Contractor’s Fee**. The Contractor’s Fee shall mean the flat fee / % in the amount of **$**\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
		2. **Guaranteed Maximum Price**. The Contract Price is guaranteed by the Contractor not to exceed **\_\_\_\_\_\_\_\_\_\_\_\_\_($\_\_\_\_\_\_\_\_\_\_\_\_\_\_),** subject to additions and deductions by Change Order. This maximum sum is referred to as the “***Guaranteed Maximum Price*”**. To the extent that the Project anticipates further development, the Guaranteed Maximum Price includes all costs except as allowed by Change Order. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner
	2. **Payments of the Contract Price.**
		1. **Payment Schedule**. Provided the Contractor has fulfilled its obligations hereunder and subject to the provisions of this Agreement, pursuant to the invoicing procedure set forth in **Sections 3.2.2** and **3.3**, Owner shall pay the Contract Price to Contractor in installments in accordance with the Payment Schedule specified in **Exhibit C**.
		2. **Invoice Requirements**. Contractor’s right to receive any payment to be paid to it hereunder is conditioned upon its submitting to Owner the following: (i) an invoice in the form of an AIA G702 and G703, (ii) a progress report describing the current progress of the Work and procurement of Materials, (iii) reasonably documented evidence of achievement of all milestones required to be achieved prior to such payment, and (iv) interim lien waivers duly executed by Contractor and each of its Subcontractors in the form of **Exhibit K** and dated as of the date of the invoice; provided that upon payment by Owner of the milestone payment associated with Delivery of Materials, Contractor shall be required to deliver a final lien waiver in the form of **Exhibit L** from the suppliers of the PV modules and inverters. Contractor’s right to receive its final payment shall be conditioned upon, in addition to the foregoing, a final lien waivers in the form of **Exhibit L** executed by Contractor and each of its Subcontractors. Owner shall have the right to verify and inspect any Work performed prior to payment being due and payable. If, after such verification and inspection, Owner determines that the invoice does not properly reflect such Work and Materials, Owner may elect not to pay the disputed portion of such invoice until it determines, in its reasonable discretion, that such Work has been performed and Materials procured, subject to Contractor’s right to dispute such determination in accordance with **Article 11** hereof.
		3. **Retainage**. Owner shall have the right to offset amounts otherwise due for each installment of the Payment Schedule by an amount equal to ten percent (10%) (“Retainage”). Retainage shall be released at Final Completion to the Contractor.
	3. **Invoices**. Each time that Contractor believes that a payment is due and payable to Contractor pursuant to the Payment Schedule, Contractor shall deliver to Owner an invoice along with the information and documentation required pursuant to **Section 3.2.2**. Subject to **Section 3.2**, Owner shall pay Contractor’s invoice within thirty (30) Days after receipt of the invoice and all required documentation.
	4. **Approval.** Payment of the Contract Price or a portion thereof shall not constitute Owner’s approval of any portion of the Project, the Work, or any Materials.
	5. **Set Off.** Owner may deduct and set-off (including but not limited to a draw on any security or retention held by Owner under this Agreement) any part or all of the balance due or to become due to Contractor under this Agreement, on the one hand, and any indemnity claims owing from Contractor or any Affiliate Contractor to Owner or any Affiliate of Owner under the Purchase Agreement, any Daily Liquidated Damages or Performance Guarantee Damages due or accrued but not paid from Contractor to Owner hereunder, any other amounts owed by Contractor to Owner under this Agreement, and any balances due or to become due to Contractor’s subcontractors, on the other.
5. ***Landfill specific requirements and/or environmental requirements – project specific***
6. **REPRESENTATIONS, WARRANTIES AND COVENANTS**
	1. **Contractor.**
		1. **Insurance.** Contractor, at its own expense, shall procure and maintain insurance in accordance with **Exhibit G**.
		2. **No Liens.** Contractor shall pay Subcontractors and others who perform work on the Project in a timely manner in accordance with the Agreement and Applicable Law to prevent construction or mechanic’s liens or any other liens being recorded against or on the Project. To the fullest extent permitted by law, the Contractor shall not permit any construction or mechanic’s lien or similar instrument to remain of record as a claim against the Project. Contractor shall, within ten (10) days following the date of recording of any construction or mechanic’s lien or the making of any claim of non-payment by any Subcontractor, supplier or other lower tier working for or through the Contractor with respect to the Work or the Project, at no increase to the Contract Price or Guaranteed Maximum Price: (a) cause such liens or claims to be settled and satisfied and, as to any lien, record a satisfaction of lien in a form satisfactory to the Owner and Owner's Lender (if any); or (b) cause such lien to be transferred to bond in accordance with the requirements of applicable laws to clear the cloud on title created by the lien, and (c) indemnify, defend and hold harmless Owner for all costs, including, but not limited to, attorney's fees, regarding such lien or claim of non-payment, together with interest on the same from the date any such cost was paid by Owner until reimbursed by Contractor at the rate of interest provided herein. If the Contractor does not discharge or satisfy any claim of non-payment or lien asserted, recorded or filed in connection with the Project as required herein, the Owner shall have the right, but not the obligation, to bond the lien or pay all sums necessary to so discharge or satisfy such claim or lien and to require the Contractor to immediately reimburse such sums to the Owner (including bond premium costs and attorneys’ fees), as applicable, or to off-set such sums from amounts due to the Contractor and to reduce the Contract Price and Guaranteed Maximum Price accordingly. If, after all payments due hereunder are made, any claim or lien remains unsatisfied and/or unbonded, or any costs incurred by the Owner in connection with the discharge or satisfaction of a claim or lien have not been reimbursed by the Contractor (or at Owner's option deducted from the Contract Price and Guaranteed Maximum Price), the Contractor shall refund to the Owner, as applicable, forthwith upon demand, all monies that the Owner may pay, or has paid, to discharge or settle any claim or lien in connection with the Project. With regard hereto, the Contractor, at the Contractor’s sole expense shall defend, indemnify and hold the Owner and other Indemnified Parties harmless against all such claims of non-payment and liens, and any and all actions, lawsuits, or proceedings brought against the Owner and other Indemnified Parties in connection with such claims or liens. This provision shall survive the expiration or termination of this Contract for any reason.
		3. **Permits**. Contractor is (or will be prior to performing any applicable physical Work at the Site) the holder of all Contractor Permits and Approvals required by Law to permit it to operate or conduct its business now and as contemplated by this Agreement and to perform the Scope of Work and with respect to the Project hereunder.
		4. **Subcontractors.** Contractor may engage one or more subcontractors, suppliers, vendors or consultants (each, a “***Subcontractor***” and collectively, “***Subcontractors***”) to provide any Work that Contractor is required to provide under this Agreement; provided, however, that Contractor will in any event remain liable for the performance of all of Contractor’s obligations hereunder; and Contractor will ensure that all personnel, labor, supervision, and Subcontractors of any tier are properly licensed and qualified to perform the work that they are engaged to perform. All such Subcontractors shall comply with all Laws of Governmental Authority, including but not limited to federal immigration laws. Nothing contained herein shall (1) create any contractual relationship between any Subcontractor and Owner with respect to the Work or the Project, or (2) obligate Owner to pay, or to cause the payment of, any Subcontractor. No Subcontractor is intended to be, or shall be deemed to be, a third-party beneficiary of this Agreement. Contractor shall include in all of its contracts with Subcontractors contractual terms allowing for the assignment of such contracts to Owner, at the Owner’s sole and exclusive election, at no additional cost and without requiring the consent of such Subcontractors.
		5. **Title.** Title to specific portions of the Project (including but not limited to, as applicable, portions of the Work and Materials) shall pass to Owner upon the earlier to occur of (i) incorporation of such property into the Project, and (ii) payment by Owner of the corresponding amounts due and owing to Contractor. Contractor warrants and guarantees that when legal title to and ownership of the Work and Materials passes to Owner, such Work and Materials shall be free and clear of any and all liens, claims, security interests or other encumbrances.
		6. **Intellectual Property Rights.**
			1. Contractor represents and warrants to Owner that (i) it owns or is licensed or is otherwise lawfully permitted to use any and all of the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents and other intellectual property relating to the design, engineering, manufacture, sale, supply, importation, assembly, construction, installation, commissioning, start-up, testing, servicing, repair and use of the Materials and the Work, and (ii) the design, engineering, manufacture, sale, supply, importation, assembly, construction, installation, commissioning, start-up, testing, servicing, repair and use of the Materials and the Work, all as reasonably contemplated under this Agreement, will not infringe on the inventions, processes, know-how, trade secrets, technical expertise copyrights, trademarks, patents and other intellectual property of any third party.
			2. Owner and Contractor acknowledge and agree that, pursuant to the terms of this Agreement, Owner is being provided and shall have access to certain intellectual property rights, which are (i) now or hereafter owned or controlled by Contractor, or (ii) used or licensed by Contractor pursuant to Contractor’s agreements with its Subcontractors, including but not limited to software, patents, copyrights, intellectual property and other proprietary information relating to the specification, design, construction, installation, operation or maintenance and repair of the Work, as well as certain training processes and the contents of service and maintenance manuals and test and inspection procedures (“***Intellectual Property Rights***”). Contractor grants Owner and its representatives an irrevocable, permanent, transferable, exclusive, royalty-free license to the Intellectual Property Rights in connection with the Project, including but not limited to in completing construction of, operating, transferring, financing, maintaining, rebuilding and expanding the Project.
	2. **Owner.**
		1. **Access Rights**. In accordance with and subject to the Customer Agreement and subject to satisfaction by Contractor of the restrictions and other provisions of Permits and Law, Owner shall provide Contractor reasonable access to the Site in order for Contractor to perform the Work.
		2. **Owner Representative**. Owner hereby appoints Owner Representative as its representative to act as the manager and coordinator of the Agreement on Owner’s behalf. Owner Representative will act as the liaison for Owner’s communications with Contractor, and all communications from Contractor to Owner Representative shall be deemed to be given to Owner.
		3. **Compliance with Laws.** Owner shall comply with all Laws in performing Owner’s obligations under this Agreement.
		4. Intentionally Omitted.
		5. **Other Contractors****.** Contractor acknowledges that Owner may have other contractors performing work at or near the Site or that Customer may be conducting certain activities at the Site. Owner will cooperate with Contractor and will make all reasonable efforts to coordinate the activities of Owner’s other contractors and Customer to minimize any interference with the Work or the Project Schedule. Upon request by Contractor, Owner will provide Contractor with reasonably sufficient information concerning the activities of other contractors and the Customer to allow Contractor to adequately plan the Work in coordination with such activities.
	3. **Mutual Representations**. Each Party represents and warrants to the other Party as of the Effective Date the following:
		1. **Organization; Authority.** Each Party is duly organized, validly existing and in good standing under the laws of the state of its formation and is qualified to do business in the State in which the Site is located. Each Party has all necessary power and authority to execute, deliver, and perform its obligations under this Agreement; the execution, delivery and performance of this Agreement by each Party have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by each Party and constitutes the legal, valid and binding obligation of such Party.
		2. **No Violation**. Neither Party is currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under, or violation of, any Law or the provisions of such Party’s organizational documents or any agreement or instrument to which such Party is bound or to which its assets are subject, which breach, default or violation could reasonably be expected to have a material adverse effect upon the ability of such Party to observe the provisions of, and to perform its obligations under, this Agreement.
		3. **No Litigation**. Each Party represents that no suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best its knowledge, threatened that would affect the validity or enforceability of this Agreement, the ability of such Party to fulfill its commitments hereunder in any material respect, or that could result in any material adverse change in the business or financial condition of such Party.
7. **SCOPE CHANGES**
	1. **Changes in the Work.**
		1. **Documentation**. Subject to the terms and conditions of this Agreement, during the term of this Agreement, the Owner may request a change in the Work or Materials (a “***Change***”). Contractor shall submit to Owner a written notice for approval of such Change (a “***Change Order***”). A Change Order shall describe the scope of the Change and shall include a detailed estimate of the increase or decrease in costs, as well as any impact on the Project Schedule, associated with the Change. Contractor acknowledges and agrees that the Contractor shall not be entitled to a change order or increase to the Contract Price or Guaranteed Maximum Price for any changes in market conditions, price escalations, labor shortages, material delays or availability, unforeseen conditions or restrictions on the Work, unexpected environmental or subsurface conditions, or any other causes or events other than the Client explicitly directing additional work outside of the Work set forth in the Contract Documents. Subject to **Section 6.1.2**, no Change shall be incorporated in the Work or Materials until both parties execute a Change Order authorizing the Change. Payment for each Change Order is due as set forth in the Change Order, or else part of the next payment cycle after the completion and approval of Work in place. Upon execution by the Parties of any Change Order, such Change Order and any additional Work and Materials authorized by said Change Order shall be made part of this Agreement.
		2. **Pricing**. Owner has the right to direct Contractor to proceed with a Change prior to execution of a Change Order. Until such Change Order is executed, amounts not in dispute for such Change shall be included in invoices accompanied by a documentation indicating the Parties’ agreement with respect to amounts not in dispute. As to amounts that are in dispute, the method and the adjustment shall be determined on the basis of actual and documented expenditures for time and materials reasonably incurred related to performing the Work and Materials attributable to the Change. No Contractor-requested Change Order shall change the compensation payable to Contractor hereunder, and Contractor shall bear any incremental costs or adjustments to the Contract Price associated with any such Change Order until such Change Order is executed.
		3. **Owner Caused Delay, Excusable Delay and Force Majeure**. Notwithstanding anything to the contrary in this Agreement, in the case of Owner Caused Delay, Excusable Delay and Force Majeure Event, Contractor shall be entitled to an equitable adjustment to the Project Schedule (including but not limited to the Guaranteed Substantial Completion Date) to account for the period of such delay, which adjustment shall be reflected through the mutual execution by the Parties of a Change Order. The Contractor’s sole remedy for delay shall be an extension of time to the Project Schedule; provided, however, in the event of Owner-caused delay (only), the Contractor shall be entitled to the verifiable added general conditions costs directly resulting from the Owner-caused delay.
8. **INDEMNIFICATION**
	1. **Contractor’s Indemnity**.
		1. **Contractor’s General Indemnity**. Contractor shall defend, indemnify and hold harmless Owner and its Affiliates, Financing Parties, the Engineer, Customer, if applicable, and each of their respective officers, directors, shareholders, affiliates, managers, members, partners, employees, representatives, agents, consultants, creditors, successors and assigns (each, an “***Owner Indemnified Party***”) from and against any and all third party suits, actions, losses, damages, injuries, liabilities, claims, demands, penalties, assessments, interests and causes of action and expenses (including but not limited to reasonable attorneys’ fees and expenses) arising or related to (A) the Contractor’s performance of the Work and this Agreement and (B) for (a) bodily injury or death to any person, including but not limited to employees of Contractor or Subcontractors and (b) damage to any property, to the extent caused by the Contractor or its Subcontractors, agents or employees, which arises out of or is connected with this Agreement, Contractor’s Work, the transactions contemplated by this Agreement or the negligence or willful misconduct of Contractor or its Subcontractors, provided that Contractor’s indemnity pursuant to this **Section 7.1.1** shall be reduced to the extent of any damages are caused by the gross negligence of the Owner Indemnified Party. In claims against any Owner Indemnified, indemnification obligations under this **Section 7.1.1** shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or Subcontractor under insurance, Workers’ Compensation Acts, disability benefit acts, or other employee benefit acts. Contractor’s indemnification obligations hereunder are not limited by insurance coverage.
		2. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND OWNER, OWNER’S OWNERS, AND OWNER’S AFFILIATED ENTITIES, PARTNERS, OFFICERS, DIRECTORS, AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY AN "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR’S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR OR ANY SUBCONTRACTOR PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER APPLICABLE LAW BY CONTRACTOR OR ANY SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; (2) ANY LIEN CLAIM ASSERTED BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT, PROVIDED THAT OWNER IS NOT IN BREACH OF ITS PAYMENT OBLIGATIONS HEREUNDER; (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE (EXCEPT TO THE EXTENT COVERED BY PROCEEDS RECEIVED FROM BUILDER’S RISK INSURANCE REQUIRED BY THE TERMS OF THE AGREEMENT), INCLUDING LOSS OF USE OF PROPERTY; AND (4) ANY CLAIM AGAINST OWNER OR INDEMNITEES ASSERTING INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE WORK PRODUCT FURNISHED BY OR THROUGH CONTRACTOR OR ITS SUBCONTRACTORS. THIS INDEMNITY DOES NOT REQUIRE INDEMNIFICATION FOR CLAIMS, DAMAGES, LOSSES, AND EXPENSES TO THE EXTENT CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE, GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF OWNER, OR ANY OF THE INDEMNITEES, OR ANY OF THEIR AGENTS OR EMPLOYEES.

EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED ABOVE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND COSTS), ARISING OUT OF, RESULTING FROM, OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE’S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EXCEPT TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF OWNER OR ANY INDEMNITEE, OR ANY OF THEIR AGENTS OR EMPLOYEES. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

The indemnification obligations herein shall not be limited by an amount of an insurance policy or a limitation on an amount or type of damage, compensation or benefits payable by or for the Contractor or anyone directly or indirectly employed by the Contractor under workers’ compensation act, disability benefit acts or other employee benefit acts.

The obligations contained in this Section shall survive the expiration, completion, abandonment and/or termination of the Agreement and final completion of the Work.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section or the Additional Insured requirements of Exhibit G, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable, or contrary to public policy, law, statute, or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

* + 1. **Contractor’s Indemnity for Legal Compliance.** Contractor agrees to indemnify, defend and hold harmless the Owner Indemnified Parties from and against all fines, penalties, related costs and expenses caused by the failure of Contractor or its Subcontractors to comply with all Laws and Permits in connection with the performance of the Work. Contractor’s indemnification obligations hereunder are not limited by insurance coverage.
		2. **Contractor’s Infringement Indemnity.** Contractor shall defend, indemnify and hold harmless the Owner Indemnified Parties from and against all third party suits, actions, losses, damages, claims and liabilities of any type or description, including but not limited to reasonable attorneys’ fees and expenses, arising from a claim of infringement of any patent or other license or intellectual property right (whether by way of copyright, trademark, trade secret, or otherwise) resulting from Contractor’s Work or any representations and warranties contained in **Section 5.1.6**.Each Party agrees to notify the other as soon as reasonably possible of any material matters with respect to which the foregoing indemnity is likely to apply and of which the notifying Party has actual knowledge. Upon notification by Owner or upon learning of the matter on its own accord, Contractor shall, without limitation, defend (subject to reasonable consultation with Owner) such action or claim at Contractor’s expense and pay the cost and damages and attorneys’ fees awarded against Owner in such action or claim; *provided, however*, that Contractor shall have the right to control the defense and settlement of all such actions or claims, which such settlement shall be subject to the consent of Owner. Indemnification pursuant to this section shall not be predicated on Owner having made payment on any such claim. In the event the apparatus or equipment, or any part thereof furnished hereunder as part of the Work, in such a suit or proceedings under this section is held to constitute infringement, and its use is enjoined, Contractor shall, at its option, and with Owner’s approval, and at Contractor’s expense, either: (a) procure for Owner the right to continue using said software, parts and components thereof; (b) replace it with non-infringing apparatus or equipment; or (c) modify it so it becomes non-infringing while retaining equivalent functionality.
		3. **Contractor’s Indemnity from Liens**. Provided that each of the Parties has complied with their respective obligations in **Article 3**, Contractor shall indemnify and defend the Owner Indemnified Parties from and against all claims, liens, charges or encumbrances pertaining to payment for the Work arising from the performance of the Work by Contractor or otherwise caused by any of its Subcontractors or any employee, agent or Affiliate of Contractor or any of its Subcontractors, which indemnity shall survive the termination of this Agreement, but only with respect to Work for which Owner has paid Contractor.
		4. **Contractor’s Environmental Indemnity**. Contractor shall have liability for and shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any breach by Contractor of Contractor’s obligations under **Section 2.6**.
		5. **Contractor’s Indemnity for Loss of Tax Credits**. Contractor shall defend the Owner Indemnified Parties against, and indemnify the Owner Indemnified Parties for, any loss of tax credits or Renewable Energy Incentives and/or Environmental Attributes resulting from the Project’s failure to achieve any tax credit Renewable Energy Incentives and/or Environmental Attributes; provided that the indemnity contained in this 7.1.06 shall not apply in the event that the failure occurs due to the sole negligence of or errors or omissions made by the Owner or the Owner’s officers, directors, shareholders, affiliates, managers, members, partners, employees, representatives, agents, creditors, successors and assigns.
	1. **Defense of Claims.** For Paragraphs 7.1.1, 7.1.2, 7.1.4, 7.1.5 and 7.1.6 above, Contractor shall have the right to defend an Indemnified Party by counsel (including insurance counsel) of Contractor’s selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. Owner shall give Contractor prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with Contractor in the defense of any such claims or actions. Contractor shall keep Owner apprised of developments with respect to any claim. Without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, Contractor shall not settle any such claims or actions in a manner that would require any action or forbearance from action by any Indemnified Party.
	2. **Contractor’s Tax Indemnity**. Contractor shall be responsible for and shall pay (or cause to be paid) all Taxes of any kind arising in connection with the Work and any materials supplied hereunder, including Taxes imposed upon its net income, payroll Taxes, import Taxes, customs duties and similar levies associated with the Work and Materials, and all sales Taxes applicable to the Work and/or the Materials. All property Taxes on the Site, Taxes imposed on Owner’s net income, and Taxes on the sale of energy from the Project shall be the exclusive responsibility of Owner. Contractor agrees to indemnify, defend, and hold harmless each Owner Indemnified Party against all Taxes, penalties, and interest resulting from Contractor’s failure to properly remit Taxes, fees, levies, or other governmental charges for which Contractor is responsible. Owner agrees to indemnify, defend, and hold harmless each Contractor Indemnified Party against all Taxes, penalties, and interest resulting from Owner’s failure to properly remit Taxes, fees, levies, or other governmental charges for which Owner is responsible.
	3. **Contractor’s Environmental and Renewable Energy Incentives Indemnity.** Contractor acknowledges that Owner is relying on the Project being eligible to qualify for and obtain the any and all Renewable Energy Incentives and/or Environmental Attributes (and amounts), including but not limited to those identified in **Exhibit A** (collectively the “**Assumed Project Renewable Energy Incentives**”). In the event that Owner is unable to obtain the Assumed Project Renewable Energy Incentives, Contractor shall indemnify, defend and hold harmless each Contractor Indemnified Party for all losses arising from the failure to obtain any such Assumed Project Renewable Energy Incentive; provided that the indemnity contained in this **Section 7.3** shall not apply in the event that the failure to obtain an Assumed Project Renewable Energy Incentive occurs due to the sole negligence of Owner. The Owner shall have sole right and title to all Energy Incentives and/or Environmental Attributes.
	4. **Owner’s Indemnity**. To the fullest extent permitted by law the Owner shall defend, indemnify and hold the Contractor harmless from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, related to bodily injury or death to any person or property damage arising out of or resulting from the negligent or willful acts or omissions of the Owner or anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable.

**7.5 Survival.** The provisions of this Article 7 shall survive expiration or early termination of the Agreement.

1. **LIMITATION OF LIABILITY**
	1. **NO CONSEQUENTIAL DAMAGES.** EXCEPT WITH RESPECT TO (i) DAILY LIQUIDATED DAMAGES, (ii) PERFORMANCE GUARANTEE DAMAGES, (iii) DAMAGES ARISING FROM CONTRACTOR’S INDEMNIFICATION OBLIGATIONS OR FROM CONTRACTOR’S NEGLIGENCE OR WILLFUL MISCONDUCT, (iv) ANY PAYMENT REQUIRED UNDER THIS AGREEMENT IN CONNECTION WITH ANY TERMINATION, (v) ANY DAMAGES AS A RESULT OF THE BREACH OF SECTION 13.13 OR (vi) ANY CONTRACT PRICE ADJUSTMENT PURSUANT TO SECTION 12.4, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES.
2. **DEFAULT; REMEDIES**
	1. **Event of Default.** The occurrence of any one or more of the following events shall constitute an event of default (“***Event of Default***”) by a Party (the “***Defaulting Party***”):
		1. A failure by the Defaulting Party to pay any amount due hereunder, after notice by the other Party (the “***Non-Defaulting Party***”) to the Defaulting Party is delivered in accordance with **Section 13.5** hereof, when such failure is not cured by payment of the amount due within thirty (30) Days after the date that such notice is received by the Defaulting Party;
		2. Dissolution or liquidation of the Defaulting Party;
		3. Assignment of this Agreement or any of its rights hereunder by the Defaulting Party for the benefit of its creditors except as otherwise permitted by this Agreement;
		4. The filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement of the Defaulting Party under the bankruptcy laws of the United States or under any insolvency act of any state, or the defaulting Party voluntarily taking advantage of any such law or act by answer or otherwise.
		5. The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against the Defaulting Party as debtor or its parent or any other Affiliate that could materially impact the Defaulting Party’s ability to perform its obligations hereunder; *provided*, *however*, that the Defaulting Party does not obtain a stay or dismissal of the filing within ninety (90) Days.
		6. If any representation or warranty made by the Contractor in this Agreement or the Purchase Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the term of this Agreement if such cessation would reasonably be expected to result in a material adverse impact on Owner, it shall constitute an Event of Default unless cured within sixty (60) Days after the date of written notice from Owner to Contractor.
		7. Except as provided in **Sections 9.1.1** or **9.1.5**, a failure by Contractor to fully and promptly perform any of its obligations hereunder and continuation of such failure for a period of ten (10) Days following the date of notice of such failure given by Owner to Contractor.
		8. A failure by Contractor to maintain its required insurance coverages pursuant to **Section 5.1.1.**
		9. Accrual by Contractor of liability for Daily Liquidated Damages in an amount beyond ten percent (10%) of the Contract Price.
		10. The amalgamation or merger by Contractor with or into, or the transfer by Contractor of all or substantially all of its assets to, another Person, unless at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by Contractor under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of Contractor’s obligations under this Agreement.
		11. Contractor ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, or ceases performing the Work, in each case whether voluntarily or involuntarily.
		12. Any action or inaction of Contractor that causes or constitutes a breach of Laws, Project Agreements, Environmental Attributes, or Renewable Energy Incentives, the PPA or Customer Agreement.
	2. **Remedies upon Event of Default.**
		1. **Non-Defaulting Party Rights**.Upon the occurrence of an Event of Default, the Non-Defaulting Party shall, at its discretion, be entitled to: (a) terminate this Agreement by written notice to the Defaulting Party; (b) suspend performance of its obligations and duties hereunder upon written notice to the Defaulting Party; and (c) pursue any other remedy given under this Agreement or now or hereafter existing at Law or in equity or otherwise.
		2. **Owner Remedies**. In the event Owner terminates this Agreement pursuant to **Section 9.2.1**, Owner shall have the right to take possession of the Project and any or all Work and all such Materials (whether at the Site or otherwise) for which Owner has paid Contractor in accordance with the **Article 3**. In such event, (i) Contractor shall, in each case at Owner’s election, assign and transfer to Owner all of Contractor’s right, title in and interest to Contractor’s contracts with its Subcontractors (including but not limited to all of the warranties and guarantees (and all claims thereunder)), all contracts for the purchase of Materials, and any other asset related to the Project that is not already under the control of Owner (including, as applicable, any Contractor Permits and Approval, Interconnection Agreement or interconnection application) if and as directed by Owner and shall provide support to Owner in obtaining any consent required for such assignment and transfer; and (b) Owner may, without prejudice to any other right or remedy it may have, finish the Work by whatever method Owner may deem expedient. Owner shall thereafter have the right to actual damages from Contractor in the sum of the costs incurred by Owner to finish the Work that exceed the Contract Price plus any Daily Liquidated Damages accruing from the Guaranteed Substantial Completion Date until the Project actually achieves Substantial Completion. The Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds costs of finishing the Work, including compensation for the services and expenses made necessary thereby, and other damages incurred by the Owner, such excess shall be paid to the Contractor.
	3. **Owner’s Termination for Convenience**. Owner may terminate this Agreement at any time upon ten (10) Days written notice to Contractor, without further liability except as provided herein. If Owner exercises its termination right under this **Section 9.3**, as Contractor’s sole remedy, Owner shall reimburse Contractor for (i) the corresponding value of the Contract Price for all Work completed and all partial Work in progress (but netted against amounts already paid by Owner in accordance with the Payment Schedule), (ii) Contractor’s demobilization costs and associated labor time, and (iii) any reasonable, documented third party costs not exceeding three (3%) of the Contract Price incurred by Contractor in connection with Contractor’s performance under this Agreement, including, without limitation, cancellation fees associated with cancelling and terminating Subcontractors. Upon such termination, Owner may, at its option, take possession of the Project and any or all Work and all such Materials (whether at the Site or otherwise). If Owner makes such election to take possession of the Project, Contractor shall, at Owner’s election, assign and transfer to Owner all of Contractor’s right, title in and interest to Contractor’s contracts with its Subcontractors (including but not limited to all of the warranties and guarantees (and all claims there under, except to the extent a claim relates to a liability of Contractor that is not being released)) with respect to the Materials or any other part of the Project as and if directed by Owner. Any amounts paid shall not include costs incurred by Contractor after the effective date of termination that Contractor reasonably could have mitigated. In the event that the Owner exercises its remedies upon an Event of Default and it is later determined or established that the exercise of such remedies was not justified or such exercise of remedies was not in accordance with the provisions of this Agreement, then such exercise of remedies shall be automatically converted to a termination for convenience and Contractor’s sole and exclusive remedy shall be as set forth in this **Section 9.3**.

**FORCE MAJEURE**

**10.1 Definition.** “***Force Majeure Event***” means any act or event that directly delays or prevents a Party from performing all or a portion of its obligations under this Agreement, or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events satisfy the requirements set forth in this **Section 10.1.1**, a Force Majeure Event includes: (i) unusually severe weather, tornadoes, hurricanes, floods, lightning, and seismic activity, including but not limited to earthquakes and volcanic eruptions; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; and (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, pandemic, terrorist acts, or rebellion. The term Force Majeure Event does not include (i) economic hardship or lack of funds; (ii) changes in market conditions, including but not limited to a general deterioration in the economy or in the economic conditions prevalent in the industry which the Party operates; (iii) inability of Contractor to obtain equipment to construct the Project, equipment failures, or acts or omissions of agents or subcontractors of Contractor, except to the extent such acts or omissions arise from a Force Majeure Event; (iv) any financial or payment obligations of either Party whether arising under this Agreement or otherwise; (v) the extent to which the Party claiming a Force Majeure Event has caused or contributed to the applicable act, event or condition by its fault or negligence or has failed to use commercially reasonable efforts to prevent or remedy such act, event, cause or condition and, so far as possible and within a reasonable time period, remove it; (vi) the extent to which the act, event, cause or condition is the result of a breach by the Party seeking to invoke Force Majeure; (vii) delays in receipt of any Permit or Governmental Authorization; (viii) delays by the Utility; or (ix)any non-national Site-specific strike or labor action affecting Contractor or its Subcontractors exclusively.

* 1. **Liability.** Notwithstanding anything to the contrary contained in this Agreement, neither Owner nor Contractor will be liable to the other Party, nor deemed to be in breach of this Agreement, to the extent it is actually and directly delayed or prevented from performing its obligations hereunder due to a Force Majeure Event.
	2. **Notice; Due Diligence.** A Party claiming a Force Majeure Event (“***Claiming Party***”) shall: (i) provide oral notice as promptly as practicable followed by written notice to the other Party (“***Non-Claiming Party***”) within three (3) Days after the Claiming Party becomes aware of such Force Majeure Event, giving a reasonably detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of that Party’s obligations hereunder; (ii) use commercially reasonable efforts in accordance with Prudent Industry Practices to remedy the condition that prevents performance and to mitigate the effects of same in order to continue to perform its obligations under this Agreement; and (iii) provide the Non-Claiming Party with written status reports at least weekly of all efforts to mitigate and remedy the Force Majeure Event.
	3. **Termination due to Force Majeure Event.** If a Force Majeure Event prevents Contractor from performing its obligations under this Agreement for six (6) months or longer, Owner may terminate this Agreement at any time upon thirty (30) Days written notice to Contractor, without further liability. If a Force Majeure Event prevents Contractor from performing its obligations under this Agreement for twelve (12) months or longer, Contractor may terminate this Agreement at any time thereafter upon thirty (30) Days written notice to Owner. If either Party exercises its termination right under this **Section 10.4**, Owner shall not be liable to Contractor for any third party and demobilization costs incurred by Contractor in connection with Contractor’s performance under this Agreement.
1. **DISPUTE RESOLUTION**
	1. **Governing Law; Jurisdiction.** This Agreement is governed by and shall be interpreted in accordance with the laws of New Jersey, without regard to principles of conflicts of law. Any legal claim, suit, proceeding, or action hereunder shall be brought in a court of competent jurisdiction located in County of the Project Site. By execution and delivery of this Agreement, each of the Parties hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts lying therein. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
	2. **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) Days following receipt of written notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly, informally, and inexpensively.
	3. **Mediation**. If direct discussions pursuant to Section 11.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the Construction Industry Mediation Rules of the American Arbitration Association (AAA) then in effect, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) business days of the matter first being discussed and shall conclude within forty-five (45) business days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be paid for by the Contractor.
	4. **Binding Dispute Resolution**. If, despite the Parties’ good faith efforts to resolve by mediation, any and all disputes arising out of, under, in connection with, or relating to the execution, interpretation, performance, or non-performance of this Contract, including the validity, scope and enforceability of this provision, shall, at the sole and exclusive election of the Owner, by (a) litigation in a court of competent jurisdiction or (b) by final and binding arbitration in the jurisdictional area of the Project, pursuant to the Construction Industry Arbitration rules then in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the Parties. The arbitral award shall be based upon the terms and conditions of this Contract and shall be final and binding on the Parties. The Owner and Contractor shall each bear its own cost of preparing and presenting its case; provided however, the arbitrator shall award attorneys’ fees, costs, and any expert witness fees related to the arbitration to the Owner if the Owner is the prevailing party. The fees and expenses of the arbitrator(s), and other similar expenses, shall be shared equally by Owner and Contractor; provided however, the arbitrator shall award reimbursement of fees related to the arbitration to Owner if the Owner is the prevailing party. The Owner or Contractor, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). The Owner or Contractor may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets. THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO HAVE DISPUTES ADJUDICATED BY A JURY.
	5. **Continued Performance**. Except to the extent the Agreement expressly provide otherwise, during the pendency of any dispute between the Parties, both Parties shall proceed with the performance of its obligations under this Contract, with reservation of all rights and remedies hereunder.
2. **WARRANTIES**
	1. **Work Warranty.**
		1. **Work Warranty.** Contractor warrants during the Work Warranty Period that:
			1. the Work and Materials shall (i) be free from defects in design, materials, assembly, and workmanship, and be new, unused, and undamaged when installed; (ii) comply with the requirements of this Agreement and all Laws; and (iii) be suitable for use under normal operating conditions;
			2. the Work will be performed (i) in a good and workmanlike manner; (ii) in accordance with the requirements of this Agreement and all Laws, Permits and Prudent Industry Practices; and (iii) using parts in conformance with all applicable manufacturer’s instructions, manuals and guidelines; and
			3. the completed Work and Materials shall perform the intended functions as a complete, integrated solar PV energy generation system as the Project is described in **Exhibit A**;
			4. Collectively, (a), (b), and (c) are the “***Work Warranty***.”
		2. **Work Warranty Period.** The Work Warranty shall commence on the Substantial Completion Date and shall continue for a period of two (2) years or the minimum required by law (the “***Work Warranty Period***”); *provided, however*, that if Work is repaired or replaced pursuant to the Work Warranty, then the Work Warranty Period with respect to such Work shall continue until ***the later of*** (a) the expiration of the Work Warranty Period or (b) one (1) year from the date of completion of such repair or replacement. Contractor and Owner shall conduct a review of the Project sixty (60) days prior to the expiration of the Work Warranty Period to determine if there are any items to be repaired or replaced prior to the end of the Work Warranty Period.
		3. **Correction of Deficiencies.** If any failure or breach of the Work Warranty occurs prior to the end of the Work Warranty Period, upon notice from Owner or if Contractor otherwise becomes aware of such failure or breach, so long as such notice or awareness occurs prior to the end of the Work Warranty Period, Contractor, at its sole cost and expense, shall immediately repair or replace the Work and Materials, or take all other necessary corrective action to cause the Work and Materials to conform to the Work Warranty and remedy all other resultant damage to the Project in accordance with the requirements of this Agreement. Contractor shall keep Owner apprised of the status of any work undertaken pursuant to this **Article 12**. All such work undertaken pursuant to this **Article 12** shall be performed in such a manner as to minimize outage time and maximize output of the Project.
	2. **Manufacturer Warranties.** Contractor shall be required to procure manufacturer warranties that, at a minimum, meet the specifications set forth in **Exhibit A** (“***Manufacturer Warranties***”). At the Substantial Completion Date, Contractor does hereby irrevocably sell, transfer, assign, convey, set over and deliver to Owner all of Contractor’s rights, title and interest in, to and under the Manufacturer Warranties. Upon the date on which the assignment takes effect, Contractor will sign such acknowledgements and other documentation that Owner reasonably requests to ensure that such assignment is effectuated. During the Work Warranty Period, Contractor shall, as part of the Work Warranty prepare, submit and pursue claims for service under and otherwise enforce the Manufacturers Warranties for Owner’s benefit. Contractor shall be excused under the Warranty from replacing any Materials covered by a Manufacturer Warranty if the warrantor shall fail or refuse to honor the same, except where such failure is due to any act or omission of Contractor. Contractor shall provide to Owner all documentation concerning or related to the Manufacturer Warranties.
	3. **PVsyst Confirmation and Contract Price Adjustment.** Prior to payment of the milestone payment associated with the achievement of Substantial Completion, Contractor (and at Owner’s option, the Independent Engineer) shall perform a PVsyst summary report incorporating the as-built specifications of the Project (the “**Engineer’s PVsyst Report**”). In the event the Energy Yield in kWh/kW/year reflected in the Engineer’s PVsyst Report is less than the Energy Yield in kWh/kW/year specified in **Exhibit A**, then (i) such difference shall be divided by the Energy Yield in kWh/kW/year specified in **Exhibit A** and the resulting quotient shall be multiplied by one hundred (100)to determine the “**Production Adjustment Percentage**” and the Contract Price shall be reduced by the Production Adjustment Percentage; (ii) the Energy Yield specified in **Exhibit A** shall be amended to reflect the value in the Engineer’s PVsyst Report; and (iii) the Engineer’s PVSyst Report shall replace the PVsyst Report as **Exhibit N**. At its election, Owner shall be entitled to reduce the amount of the milestone payment made in connection with the achievement of Substantial Completion or Final Completion to reflect such Contract Price reduction.
	4. **Performance Guarantee.**
		1. **Measured Performance Ratio.** Contractor guarantees that the Measured Performance Ratio in the first two years of operation (from the Substantial Completion Date to each of the first two anniversaries of the Substantial Completion Date, ***“Year One”*** and “***Year Two”*** respectively) shall meet or exceed the Expected Performance Ratio for such year. At the first and second anniversary of the Substantial Completion Date, Owner shall calculate (i) the actual annual output of the Project the “***Annual Output***”) and (2) the projected annual output for the year as set forth in **Exhibit N** (the ***“PVsyst Output”***). The “***Measured Performance Ratio***” is the performance ratio, expressed as the percentage that the Annual Output for the period bears to the PVsyst Output for that period. The “***Expected Performance Ratio***” for each of Year One and Year Two is as set forth in **Exhibit A**.
		2. **Performance Guarantee Damages.** In the event that the Measured Performance Ratio does not meet or exceed the Expected Performance Ratio for Year One, and the Contractor is not able to meet the Expected Performance Ratio within thirty (30) days, the Parties agree that Owner shall be entitled to damages due to the lost revenue in an amount equal to the difference between the Expected Performance Ratio for the year and the Measured Performance Ratio for Year One (expressed as a percentage) multiplied by the product of the PVSyst Output and the Year One Lost Revenue Rate (***“First Year Performance Guarantee Damages”***). In the event that the Measured Performance Ratio does not meet or exceed the Expected Performance Ratio for Year Two, and the Contractor is not able to meet the Expected Performance Ratio within thirty (30) days, the Parties agree that Owner shall be entitled to damages due to the lost revenue in an amount equal to the difference between the Expected Performance Ratio for Year Two and the Measured Performance Ratio for Year Two (expressed as a percentage) multiplied by the product of the PVsyst Output and the Year Two Lost Revenue Rate (***“Second Year Performance Guarantee Damages***” together with the First Year Performance Guarantee Damages the ***“Performance Guarantee Damages”***). Contractor shall pay any applicable Performance Guarantee Damages within thirty (30) days after Owner invoices Contractor for the same.

THE PARTIES AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE UNDER THE PRESENTLY KNOWN AND ANTICIPATED FACTS AND CIRCUMSTANCES TO ASCERTAIN AND FIX THE AMOUNT OF ACTUAL DAMAGES THAT WOULD BE SUFFERED DUE TO CONTRACTOR’S FAILURE TO ACHIEVE THE EXPECTED OUTPUT FOR THE PROJECT. THEREFORE, THE PARTIES ACKNOWLEDGE THAT THE PERFORMANCE GUARANTEE DAMAGES ARE A FAIR AND REASONABLE PRE-ESTIMATION OF THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY OWNER FOR SUCH FAILURE, AND THAT THE PERFORMANCE GUARANTEE DAMAGES DO NOT CONSTITUTE A PENALTY.

1. **MISCELLANEOUS**
	1. **Assignment.**
		1. **General Prohibition on Assignment.** Contractor shall not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the prior written consent of the Owner. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.
		2. **Permitted Assignments.** Notwithstanding **Section 13.1.1**, Owner may, without Contractor’s consent, but with written notice to Contractor: (i) assign this Agreement to (A) any subsidiary, Affiliate or special purpose company formed by Owner or any Affiliate for the purpose of developing and owning the Facility, or (B) a purchaser of the Project or (C) a purchaser of all or substantially all of Owner’s assets or Owner’s successor in interest as part of a corporate reorganization, consolidation, take-over, merger or other business combination, or (ii) collaterally assign this Agreement as security to any lender in connection with the Project; *provided*, *however*, that no assignment of this Agreement by Owner pursuant to this **Section 13.1.2** shall release Owner from its further obligations and liabilities under this Agreement effective when such assignee shall deliver a written assumption of Owner’s rights and obligations under this Agreement to Contractor.
	2. **Entire Agreement; Integration; Exhibits.** This Agreement, including the Exhibits attached hereto, which are incorporated by reference, constitutes the entire agreement and understanding between Owner and Contractor with respect to the subject matter hereof and supersedes all other prior agreements and understandings relating to the subject matter hereof, which are of no further force or effect. In the event of a conflict between the provisions of this Agreement and those of the Exhibits, the Contractor shall be responsible for providing the better quality or greater quantity of Work and shall comply with the more stringent requirement.
	3. **Amendments.**  This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Owner and Contractor.
	4. **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best efforts to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
	5. **Notices.** Any notice required or permitted to be given under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery and may be sent by overnight delivery or other method with confirmed signature receipt to the addresses set forth in **Exhibit A** or to such other address as a Party may designate by written notice to the other Party.
	6. **Parties’ Representatives.** Each Party hereby appoints the respective person indicated in **Exhibit A** as its Representative, who, unless otherwise indicated in writing by such Party, will be authorized to represent it in all respects regarding the Agreement. Either Party may replace its Representative under this Agreement at any time by providing written notice thereof to the other Party.
	7. **Further Assurances.** Upon receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this **Section 13.7**.
	8. **No Partnership or Joint Venture.** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Owner. This Agreement shall not create any partnership or joint venture between the Parties nor impart any rights enforceable against the Parties by any third party (other than a permitted successor or assignee bound to this Agreement).
	9. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
	10. **Counterparts.** This Agreement may be executed in one or more counterparts and delivered by electronic means, each of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.
	11. **Definitions**. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in **Exhibit P**.
	12. **Survival of Obligations.** The expiration or earlier termination of this Agreement shall be without prejudice to the obligations which one Party owed to the other Party hereunder as of the time of such expiration or termination. Provisions of this Agreement which expressly provide for survival shall survive the expiration or termination of this Agreement for the periods of time so noted.
	13. **Waivers.** No delay or omission by a Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the Party waiving its rights.
	14. **Confidentiality.**
		1. **Definition of Confidential Information**. The term “***Confidential Information***” means: (a) proposals and negotiations concerning this Agreement; (b) the terms of this Agreement; (c) the actual invoices billed, and other supporting material provided, to Owner under this Agreement; or (d) information that either Owner or Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; or (iv) information that the recipient independently developed without a violation of this Agreement.
		2. **Duty to Maintain Confidentiality**. Contractor and Owner agree not to disclose Confidential Information received from the other to anyone (other than Contractor’s and Owner’s Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Project (including but not limited to Subcontractors), employees, officers and directors who agree to be bound by the provisions of this **Section 13.13**), without the deliverer’s prior written consent. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made to the Utility pursuant to the Interconnection Agreements, or to Governmental Authorities by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. In the event a recipient is required by Law or by a court or regulatory agency to disclose Confidential Information, the recipient will, to the extent possible, give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order.
		3. **Irreparable Injury; Remedies**. Contractor and Owner each agree that disclosing Confidential Information of the other in violation of the terms of this **Section 13.13** may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including but not limited to injunctive relief.
		4. **Public Statements**. Except as permitted by **Section 13.13.2**, Contractor may not issue or make any public announcement, press release or statement regarding this Agreement unless such public announcement, press release or statement is issued jointly by the Parties or else approved in writing by the Owner. Notwithstanding anything to the contrary in this **Section 13.13**, Owner may issue or make public announcements, press releases and statements relating to this Agreement and the Project without any restrictions.
	15. **Negotiated Terms**. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

***(SIGNATURE PAGES FOLLOW)***

*[SIGNATURE PAGE]*

*SOLAR ENGINEERING, PROCUREMENT, AND CONSTRUCTION SERVICES AGREEMENT BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date*.*

|  |  |
| --- | --- |
| CONTRACTOR:By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | OWNER:By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**lIST OF Exhibits**

**Exhibit** **Description**

Exhibit A - Scope of Work

Exhibit B - Site Description

Exhibit C - Payment Schedule

Exhibit D - Project Schedule

Exhibit E - System Testing Protocols and Capacity Test

Exhibit F - Start up and Commissioning Checklist

Exhibit G - Insurance

Exhibit H - Permits

Exhibit I -1- Form of Mechanical Completion Certificate

Exhibit I-2- Form of Substantial Completion Certificate

Exhibit I-3- Form of Final Completion Certificate

Exhibit J - Schedule of Values

Exhibit K - Interim Waiver and Release

Exhibit L - Final Waiver and Release

Exhibit M - QA QC Program

Exhibit N - PVsyst Report

Exhibit O - Inspection Checklist & Photo Guidelines

Exhibit P - Definitions

Exhibit Q - Safety Plan

Exhibit R - Cost of the Work