

EXHIBIT A

INTERGOVERNMENTAL SOLAR POWER PURCHASE AGREEMENT

THIS INTERGOVERNMENTAL SOLAR POWER PURCHASE AGREEMENT

AGREEMENT (“Agreement”) is dated as of _____, 2022 (the “Contract Effective Date”) by and between THE CITY OF PHILADELPHIA (“City”) acting through its Procurement Department and THE PHILADELPHIA ENERGY AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (“Authority” or “PEA”).

RECITALS

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Municipalities Authorities Act of 2001 (the Act of June 19, 2001, P.L. 287, No. 22, as amended) pursuant to ordinances of the Council of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA), as amended by an Ordinance approved on January 3, 2019 (Bill No. 181007) to take actions concerning the purchase or facilitation of energy supply and energy services on behalf of the City; and

WHEREAS, the City has requested that the Authority enter into a Solar Power Purchase Agreement (the “PPA”) with Solaer USA PNE LLC (together with any successors or assigns, the “Vendor”), to purchase electricity and environmental and capacity attributes (or replacement attributes) from a solar farm the Vendor intends to develop, design, construct, own, and operate on land leased from the City, at the Northeast Philadelphia Airport, with a total nameplate capacity of 1.5 MW (AC) (the “PNE Solar Project”); and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. _____, approved by the Mayor on _____, 2022 duly empowering the City and the Authority to enter this Agreement and Exhibits thereto; and

WHEREAS, by resolution dated _____, 2022, the Board of Directors of the Authority has authorized its Chairman, Vice-Chairman or its President & CEO to, among other things, execute this Agreement and the PPA; and

WHEREAS, the Vendor and the Authority propose to enter into the PPA, in the form attached hereto as Exhibit A, contemporaneously with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other valuable consideration, the City and the Authority (collectively, the “Parties”), intending to be legally bound, hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the PPA.

2. Term.

The term of this Agreement shall commence on the Contract Effective Date and shall terminate one day after the expiration or termination of the PPA; provided that to the extent that any obligations of the Authority under the PPA survive expiration or termination of the PPA, the City's corresponding obligations under this Agreement shall remain in effect and be enforceable following such expiration or termination.

3. Obligations of the Authority.

- (a) Authority shall provide all required administrative services necessary to fulfill its obligations to the Vendor and the City for the prompt and timely submission of any required representations and documents required under the PPA (the "Administrative Obligations").
- (b) The Authority shall provide the City with copies of any notices received by the Authority from the Vendor, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.
- (c) The Authority shall provide the City with copies of any notices received from any governmental authority with respect to the PNE Solar Project in relation to the performance or transactions contemplated by this Agreement, the PPA, or the other operative documents.
- (d) The Authority shall not amend, modify, alter or otherwise change the PPA, once fully executed, without the prior written consent of the City.
- (e) The Authority shall not assign the PPA once fully executed, without the prior written consent of the City.
- (f) The Authority shall pay over to the City any payments due from the Vendor with respect to the PPA other than payments such as indemnities of PEA that are intended for the direct benefit of PEA.
- (g) The Authority shall transfer all rights and ownership to the City of all Metered Output, Environmental Attributes, or other assets or payments obtained from the Vendor in accordance with the PPA; provided that PEA may retain copies of all documents related to the administration of the PPA.

4. Obligations of the City

- (a) With the exception of Administrative Obligations, the City assumes and shall perform all other non-financial obligations of the Authority to the Vendor under the PPA. The City shall make *[or cause to be made on the Authority's behalf]* timely payments to the *[Authority/City's load serving entity/Vendor]* for all invoices submitted for the Metered Output and shall make payments to the Authority for all invoices submitted to the City by the Authority for other payments required to be made to the Vendor

under the PPA including, damages, termination payment, indemnification, charges, reimbursements, or any other payment of any kind, in each case payable by the Authority under the PPA.

(b) The City shall timely and promptly review all required representations and documents, and shall confirm the accuracy of any representations and provide timely approvals of all documents required under the PPA.

(c) The City shall perform all of the Authority's obligations to the Vendor under the PPA which it has obligated itself to undertake herein in a prompt and timely manner.

(d) The City will promptly furnish information as needed by the Authority to comply with this agreement or the Vendor to perform the PPA.

5. Indemnification.

Subject to the provisions and limitations of this Section and to the extent permitted at law, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Agreement or the PPA, unless the losses, damages or liabilities arise from an adjudication of gross negligence, bad faith, fraud or deceit of the member, officer or employee of the Authority. In the event any claim is made or action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected by the Authority shall be approved by the City and the City shall reimburse the Authority's associated reasonable costs of such defense, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto. The City's obligations to the Authority under this indemnity survive any termination of this Agreement or assignment to a Successor Authority (as defined below).

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, or the City chooses to cause the Authority to assign the PPA to another authority, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder, in which event, the City shall cause such Successor Authority to assume all obligations and liabilities of the Authority under the PPA. The City's foregoing right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof. Notwithstanding the foregoing, upon any termination of an Authority, (a) the City shall enter into a new Agreement, substantially in the form hereof, with any such Successor Authority that succeeds to the rights of or assumes the obligations and liabilities of the Authority under the PPA; and (b) all obligations of the City to a terminated Authority that accrued prior to termination shall survive termination and shall be owed to (i) the Authority to the extent of expenses incurred by the Authority, and (ii) to the Successor Authority that assumes the obligations and liabilities of the terminated Authority under the PPA to the extent they represent unpaid obligations to the Vendor.

7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Agreement to the contrary, the payment obligations of the Authority arising under the PPA are special obligations of the Authority, payable solely from payments received from the City. The Authority will do all things within its power to timely request funds from the City to fulfill its payment obligations.

The City's obligations under this Agreement shall not create any indebtedness of the City within the meaning of any constitutional or statutory provision relating to the incurrence of debt by the City.

8. Tort Claims Act.

Nothing in this Agreement or the PPA shall waive or be construed to waive or amend, or be deemed to waive or amend, any tort immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

9. Representations and Warranties of Authority.

The Authority represents and warrants that:

- (a) The Authority is a body corporate and politic, validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform the obligations under this Agreement.
- (b) The Authority has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms.
- (c) Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any Applicable Law in effect on the date as of which this representation is being made or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.
- (d) (1) The Authority will execute the PPA. The Authority is duly authorized to execute and deliver the PPA. The PPA will constitute legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, receivership, moratorium and other laws affecting creditors' rights generally; and (2) the City was allowed to review and approve the form of the PPA prior to its execution, in the form executed by the Authority and the Vendor.
- (e) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of the PPA or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.
- (f) The Authority has complied with the provisions of Chapter 17-1400 of The Philadelphia Code,

including the provisions of Subsection 17-1404(3), in awarding the PPA as though such agreement was directly subject to the provisions of Chapter 17-1400.

10. Representations and Warranties of the City.

The City hereby represents and warrants that:

- (a) The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) The City has duly authorized the execution and delivery of this Agreement and the taking of any and all actions as may be required on its part to carry out and to give effect and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as such enforcement may be limited by laws relating to bankruptcy, insolvency, reorganization, receivership, arrangement, moratorium and other laws affecting creditors' rights, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion in appropriate cases.
- (c) Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any Applicable Laws in effect on the date as of which this representation is being made, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.
- (d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with its obligations under this Agreement.
- (e) The City has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the City of this Agreement and the transactions contemplated hereby.

11. Effect of City Approval

Review, approval or acceptance by either Party of any documents submitted by the other Party or the Vendor under or in connection with the Agreement or the PPA shall not constitute approval otherwise required under Applicable Law by any and all City departments, boards or commissioners, or by any other federal, state, or local governmental authority having jurisdiction.

12. No Merger.

The rights and obligations of the Parties under this Agreement shall remain in effect and shall not merge,

even if the same Party holds rights of both Parties hereunder, unless such Party terminates this Agreement in writing.

13. Severability.

In the event that any of the provisions, or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. Notice.

Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Energy Authority
City Hall, Room 566
1400 JFK Boulevard
Philadelphia, PA 19107
Attention: President & CEO

Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Office of Sustainability
1515 Arch Street, 13th Floor
Philadelphia, PA 19102
Attention: Energy Manager

with a copy to:

City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
Attention: Chief Deputy City Solicitor – Regulatory Law

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile or electronic mail and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Agreement.

15. Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

16. Amendments.

The parties acknowledge that from time to time the Agreement may require amendments to support the Parties' interests and obligations under the PPA. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

17. No Third-Party Rights.

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

18. No Conflict.

To the extent of any conflict between the terms and conditions set forth in this Agreement, notwithstanding the City's assumption of the Authority's obligations in Section 4 of this Agreement, and the PPA, the terms and conditions of the PPA shall govern.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:
Diana P. Cortes, City Solicitor

THE CITY OF PHILADELPHIA, acting
through its Procurement Department

By: _____
Kevin Birriel
Deputy City Solicitor

By: _____
Monique Nesmith-Joyner
Commissioner

**THE PHILADELPHIA ENERGY
AUTHORITY**

By: _____
Emily Schapira
President & CEO

Exhibit A
Form of Solar Power Purchase Agreement

EXHIBIT B

**SOLAR POWER PURCHASE
AGREEMENT**

between

Philadelphia Energy Authority

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Solaer USA PNE LLC

as Seller

Dated as of _____, 2022

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Exhibits

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E	Form of Notice to Proceed
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SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement, dated as of the _____, 2022 (the “**Effective Date**”), is entered into by **SOLAER USA PNE LLC**, a Pennsylvania Limited Liability Company (the “**Seller**”) and _____, a _____ (the “**Purchaser**”).

Background

A. The City of Philadelphia (the “**City**”), through its Commerce Department, Division of Aviation (“**DOA**”), operates the Northeast Philadelphia Airport (the “**Airport**”).

B. The Purchaser and the City issued an RFP dated March 16, 2021 seeking proposals for a distributed solar photovoltaic (“**PV**”) resource at the Airport, through a long-term power purchase agreement with commercial operation in the first quarter of 2022, and Purchaser and the City have selected Seller to build a [*approx.. 1.5MW*] PV resource (the “**System**”) at the Airport pursuant to the RFP.

C. Purchaser desires to purchase all of the solar-generated energy and SRECs produced by the System for the benefit of the City’s operations at the Airport and to help meet the City’s and DOA’s commitment to construct a renewable energy project that reduces greenhouse gas emissions and assisting the City to become 100% carbon neutral by 2050. The City will enter into a power and SREC purchase agreement (the “**City Solar Power Purchase Agreement**”) under which it will acquire all the power and SRECs purchased under this Agreement and agree to perform Purchaser’s obligations under this Agreement.

D. The Seller desires to construct, own, operate and maintain the System to be located on [*approximately 9.0*] acres of the Airport (the “**Site**”) leased from the City under a standard Airport lease (the “**Site Lease**”) and to sell all of the electricity and SRECs generated by the System to the Purchaser for use at the Airport for use by the City or export of electricity to the Local Distribution Company pursuant to its net metering tariff rate RS-2.

E. Seller is a Pennsylvania Limited Liability Company with the full power and authority to enter into and perform this Agreement. Seller is an affiliate of Solaer USA LLC which

has agreed to guarantee Seller's performance of this Agreement pursuant to a guarantee agreement (the "**Seller Guarantee**") for the benefit of the Purchaser and the City.

F. Purchaser is a body corporate and politic, organized under the Municipality Authorities Act, 53 Pa.C.S., Ch. 56; and Purchaser is authorized to take actions concerning the purchase or facilitation of energy supply and energy services on behalf of the City under Ordinance No. 100163- AA, passed by the Philadelphia City Council on June 3, 2010 and signed by the Mayor on July 29, 2010.

G. The Philadelphia City Council enacted an ordinance, Bill No. _____ approved by the Mayor on [Date] duly authorizing the City and Purchaser to enter into the City Solar Power Purchase Agreement.

Agreements

In consideration of the Background and the mutual representations and covenants set out below, the parties, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS; CONVENTIONS

1.1 Definitions. Unless otherwise expressly defined herein (including with respect to sections 12.4 and 12.5), each of the following capitalized terms has the meaning given to it in this Section 1.1.

AAA shall have the meaning set forth in Section 10.6(a).

A&E Standards shall have the meaning set forth in Section 4.2.

Affiliate shall mean, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

Air Operations Area or **AOA** shall have the meaning set forth in Section 13.4(e).

Airport shall have the meaning set forth in the Background to this Agreement.

Airport Modifications shall have the meaning set forth in Section 13.5(d).

Airport Modification Termination Date shall have the meaning set forth in Section 13.5(d).

Annual Delivery Guarantee shall have the meaning set forth in Section 8.3.

Annual Shortfall shall have the meaning set forth in Section 8.3(a).

Antidiscrimination Policy shall have the meaning set forth in Section 12.2(a).

Applicable Law shall mean all applicable present and future laws, ordinances, rules, regulations, orders and requirements of all Federal (including Federal Aviation Administration (“FAA”) Grant Assurances (hereinafter defined) and Transportation Security Administration (“TSA”) requirements), Commonwealth and local governments (including Philadelphia County), courts, departments, commissions, boards or agencies, and or any board of fire underwriters having jurisdiction over the Airport, including the Premises and the activities conducted thereon. For purposes of this Agreement, “**FAA Grant Assurances**” shall mean certain obligations with respect to the maintenance and operation of the Airport facilities required by the FAA in connection with any FAA-administered airport financial assistance programs, all fire, safety, zoning and electrical codes, the ADA and Airport Rules and Regulations.

Applicable Standards shall mean: (a) Good Industry Practice, (b) Applicable Law and (c) the requirements of this Agreement, the Site Lease, the Interconnection Agreement and all insurances policies that the Seller is required to maintain with respect to the System under this Agreement or the Site Lease.

Business Day shall mean any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 08:00 a.m. EPT and close at 05:00 p.m. EPT.

Change of Control shall have the meaning set forth in Section 15.1(d)

City shall mean The City of Philadelphia, Pennsylvania, a Pennsylvania municipal corporation.

City Solar Power Purchase Agreement shall have the meaning set forth in the Background.

Claims shall have the meaning set forth in Section 10.2(b).

Commercial Operation shall have the meaning set forth in Section 6.8(a).

Commercial Operation Date shall mean the date on which Commercial Operation occurs.

Confidential Information shall have the meaning set forth in Section 10.5(b).

Construction Documents shall have the meaning set forth in Section 4.3(c).

Contract Commitment(s) shall have the meaning set forth in Section 12.2

Credit Requirements shall have the meaning set forth in Section 4.1(a).

Damage Payment shall have the meaning set forth in Section 10.3(b).

Delay Damages shall have the meaning set forth in Section 6.6(b).

Delivery Point shall mean the point identified as such in Exhibit A.

Disclosing Party shall have the meaning set forth in Section 10.5(a).

DSBE shall have the meaning set forth in Section 12.2(a).

Early Termination Fee shall mean, for any date, the amount applicable to such date as set forth in Exhibit J.

Effective Date shall have the meaning set forth in the preamble to this Agreement.

Environmental Attribute shall mean any and all claims, credits, benefits, emissions, aspects, characteristics, claims, benefits, reductions, offsets, or allowances created pursuant to Applicable Law or by an independent certification authority, howsoever entitled or designated, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water attributable to or associated with the System. Environmental Attributes include (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides, carbon monoxide, and other pollutants; and (b) any avoided emissions of carbon dioxide, methane and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) tax incentives, (ii) any environmental claim or other liability or (iii) adverse wildlife or environmental impacts, (iv) electricity and (v) capacity.

Environmental Laws shall mean all current and future Federal, Commonwealth, and local environmental safety or health laws, statutes, rules, regulations, ordinances, orders, or common law including, but not limited to reported applicable decisions of any Commonwealth or Federal court and shall include, but not be limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 5101 et seq.); the Clean Air Act, as amended, (42 U.S.C. § 7401 et seq.); the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.); the Oil Pollution Act of 1990, as amended (33 U.S.C. § 2701 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. § 300 et seq.); the Pennsylvania Solid Waste Management Act, as amended (35 P.S. § 6018.101 et seq.); the Pennsylvania Hazardous Sites Cleanup Act, as amended (35 P.S. § 6020.101 et seq.); the Pennsylvania Clean Streams Law, as amended (35 P.S. § 691.1 et seq.); the Pennsylvania Underground Storage Tank and Spill Prevention Act 35 P.S. § 6021.10, et seq.; the Pennsylvania Hazardous Material Emergency Planning and Response Act, as amended (35 P.S. § 6022.101 et

seq.); and The Philadelphia Code, as any of the foregoing may hereinafter be amended; any rule or regulation promulgated pursuant thereto; and any other applicable present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health, or safety issues of or by the Federal government or the Commonwealth or other applicable political subdivision thereof, or any agency, court or body of the Federal government, or the Commonwealth or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

EOP shall have the meaning set forth in Section 12.2(a).

EOP Damages shall have the meaning set forth in Section 12.2(c).

Estimated Annual Production shall mean, for each Operating Year, the amount specified on Exhibit I adjusted, as provided in Exhibit I, for insolation and temperature.

Event of Default shall have the meaning set forth in Section 11.1.

FAA shall mean the Federal Aviation Administration.

Fair Market Value shall mean the amount that would be obtained in an arm's-length transaction between an informed and willing Purchaser-user and an informed and willing seller, each under no compulsion to buy or sell; provided that in such determination (a) the costs of removal of the System from the location of current use shall not be a deduction from such value, (b) it shall be assumed (whether or not the same be true) that the System has been maintained (subject to normal wear and tear) and would have been returned to the Seller in compliance with the requirements of this Agreement and (c) the value for the System shall be determined on an installed basis, in place and in use.

Final Completion shall have the meaning set forth in Section 6.9(a).

Force Majeure shall mean an event not anticipated as of the Effective Date, which materially adversely affects the ability of one party to timely perform and which is not within the reasonable control of the party affected thereby or attributable to such party's fault or negligence, and which by the exercise of due diligence the affected party is unable to overcome or obtain or cause a commercially reasonable substitute therefore to be obtained. Failure of the System will not constitute Force Majeure unless such failure is caused by a circumstance that would otherwise constitute Force Majeure. Force Majeure does not include (i) strikes or other labor actions arising from labor relations issues involving the employees of the Contractor or Subcontractors in connection with the Project or operation or maintenance of the System or (ii) any Hazardous Substance for which the Contractor is responsible under Section 10.8, (iii) the Seller's ability to sell the electrical output of the System or any component thereof at a more advantageous price; or (iv) Seller's failure to finance and/or construct the System. Increased cost of performance by Seller shall not constitute an event of Force Majeure. The failure to specifically exclude an event shall not be interpreted to indicate that it is a Force Majeure event.

Good Industry Practice shall mean those practices, methods and standards that, in the exercise of reasonable and prudent judgment by a company designing, installing, constructing and operating a facility such as the System, in the United States, based on facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner that (a) is consistent with Applicable Law and all codes, manuals and engineering and safety standards generally applied in projects similar to the System, (b) gives due consideration to reliability, safety and protection of persons and equipment and (c) is consistent with manufacturers' recommendations and warranties.

Governmental Authority shall mean any federal, state, local or municipal governmental, quasi-governmental, regulatory or administrative agency, commission, court, tribunal or other body or authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, taxing or other binding jurisdiction, authority or power. Governmental Authority includes the Philadelphia City Council, the FAA, and the Local Distribution Company acting pursuant to a tariff approved by the Public Utility Commission.

Hazardous Substance shall mean: (1) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, hazardous chemicals, radioactive material, oil, petroleum, petroleum products or by-products, crude oil, natural gas, natural gas liquids, hazardous chemical gases and liquids, volatile or highly volatile liquids, and/or synthetic gas, and shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants," or "contaminants," as those terms are used in any Environmental Law or at common law; and (2) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine in generally applicable regulations from time to time are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned up or remediated.

Indemnified Party shall have the meaning set forth in Section 10.2(c).

Indemnifying Party shall have the meaning set forth in Section 10.2(c).

Initial Term shall have the meaning set forth in Section 3.1.

Interconnection Agreement shall mean the Interconnection Service Agreement between the City and the Local Distribution Company that permits the interconnection of the System to the electric distribution system of the Airport and net metering of the Airport by the Local Distribution Company under its tariff rate RS-2.

Lender Required Consents shall have the meaning set forth in Section 14.1(c).

Lien shall mean any mortgage, pledge, lien (including mechanic's, labor or materialman's Lien), charge, security interest, encumbrance or claim.

LoC shall have the meaning set forth in Section 4.1(a).

Local Distribution Company shall mean PECO Energy Company, the electric utility responsible for electric energy transmission and distribution service to the Airport.

Metered Output shall mean the entire electrical output of the System made available to Purchaser as measured by the meters installed at the Delivery Point.

MBE shall have the meaning set forth in Section 12.2(a).

M/W/DSBE shall have the meaning set forth in Section 12.2(a).

Notice to Proceed shall have the meaning set forth in Section 2.3(c).

Notice to Proceed Date shall mean the date of the Notice to Proceed.

OEO shall have the meaning set forth in Section 12.2(a).

Operating Year shall mean each City fiscal year (July 1 to June 30) commencing on the Commercial Operation Date; provided that if the first and last Operating Years are not full calendar years, the first Operating Year begins on the Commercial Operation Date and ends on to the next-following June 30, and the last Operating Year will begin on July 1 of the calendar year in which this Agreement terminates and end on the date of termination.

Permits shall have the meaning set forth in Section 4.5.

Person shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

Preconstruction Contingencies shall have the meaning set forth in Exhibit O.

Project shall mean the development and installation of the System and all related activities undertaken pursuant to this Agreement prior to the Commercial Operation Date including the satisfaction by Seller of all conditions precedent.

Public Utility Commission shall mean the Pennsylvania Public Utility Commission.

Purchase Date shall mean: (a) at the end of the calendar year in which the () anniversary of the Commercial Operation Date occurs or (b) at the end of each calendar year thereafter or (c) at the expiration of the initial term.

Purchase Price shall mean, for electricity and SRECs, the respective prices set forth for each year of the Term in Exhibit H.

Purchaser shall have the meaning set forth in the preamble to this Agreement.

Purchaser Indemnified Persons shall mean the Purchaser, the City, and each of their respective officers, employees, boards, members, councilmembers, commissions, representatives and agents.

Purchaser Make-Up Amount shall have the meaning set forth in Section 8.3(a).

Receiving Party shall have the meaning set forth in Section 10.5(a).

Renewal Term shall have the meaning set forth in Section 3.1.

RTKL shall have the meaning set forth in Section 10.5(b).

Scheduled Commercial Operation Date shall have the meaning set forth in Section 6.6(b).

Seller shall have the meaning set forth in the preamble to this Agreement.

Seller Guarantee shall mean the Guarantee by Solaer USA of the obligations of Seller under this Agreement in the form attached as Exhibit C.

Seller's Credit Support shall have the meaning set forth in Section 4.1.

Seller's Work shall have the meaning set forth in Section 6.1(a).

Seller's Makeup Amount shall have the meaning set forth in Section 8.4.

Site shall mean the real property subject to the Site Lease and described in Exhibit A.

SREC shall mean an alternative energy credit produced by a solar generation facility that meets the registration requirements for the Tier I solar photovoltaic share in accordance with the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §1648.1 *et seq.*, or any superseding standard or program applicable in Pennsylvania.

System shall mean: (a) the integrated assembly of photovoltaic panels, mounting, assemblies, inverters, converters, metering, lighting, fixtures, transformers, ballasts, disconnections, combiners, switches and wiring to be installed at the Site, all as more specifically described in Exhibit B and (b) all alterations, additions, improvements or installations made thereto.

Taxes shall mean and include: (a) all real estate taxes and assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Site, and any existing or future improvements of whatever kind thereto or thereon, including the System, any income

received by Seller from its activities on the Airport, or upon the privileges of Seller to occupy space at the Airport. Taxes shall include, without limitation, any assessment imposed by any Governmental Authority by reason of any building being located in a special services district or similar designation, and (b) any applicable property taxes, in addition to any realty transfer taxes due in connection with this Agreement, City of Philadelphia Business Income & Receipts Tax, Net Profits Tax, School District Realty Use & Occupancy Tax, Wage Tax, and other similar taxes and charges. If, due to a future change in the method of taxation, any other tax, however designated, is imposed in substitution for Taxes or any part thereof, or if any rental tax is imposed, then such other tax shall be included in the term “Taxes”.

Term shall have the meaning set forth in Section 3.1

TSA shall have the meaning set forth in Section 13.4(c).

Undelivered Electricity shall mean any period in which a circumstance exists that prevents electricity to be delivered to the Delivery Point, the amount of electricity that would have been delivered had such circumstance not existed as reasonably estimated by the Seller.

Wage Damages shall have the meaning set forth in Section 12.2(b).

WBE shall have the meaning set forth in Section 12.2(a).

1.2 Conventions. Unless otherwise specifically provided in this Agreement:

(a) terms defined in the singular shall have the corresponding plural meaning when used in the plural, and terms defined in the plural shall have the corresponding singular meaning when used in the singular;

(b) references to agreements, certificates and other legal instruments shall include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns;

(c) references to Persons shall include their permitted successors and assigns;

(d) the term “include”, “includes” or “including” shall mean, include, includes or including without limitation (as the case may be);

(e) references to Articles, Sections and Exhibits shall mean the articles and sections of, and exhibits to, this Agreement;

(f) references to this Agreement shall mean this Agreement, including all schedules and exhibits;

(g) the term “day” shall mean a calendar day and includes Saturdays, Sundays and holidays, except that, if any financial or administrative obligation to be performed under this

Agreement falls due on a Saturday, Sunday or a holiday on which State banks are not open for business, the obligation shall be due on the next business day thereafter;

(h) a reference to a statute or to a regulation issued by a governmental authority includes the statute or regulation in force as of the date hereof, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations; and

(i) a reference to a Governmental Authority or to a public officer includes an entity or officer that or who succeeds to substantially the same functions as those performed by such Governmental Authority or officer as of the date of this Agreement.

ARTICLE 2

CONDITIONS PRECEDENT; REPRESENTATIONS AND WARRANTIES

2.1 Conditions Precedent to the Obligations and Liabilities of Seller. The obligations and liabilities of the Seller under this Agreement (except Section 2.3) are subject to the satisfaction or waiver by the Seller of each of the following conditions precedent:

(a) all Permits required for installation, operation and maintenance of the System and the sale and delivery of electricity to the Purchaser that can be obtained in the ordinary course before commencement of construction have been obtained, including, without limitation Philadelphia City Council approval;

(b) the Purchaser has delivered to the Seller (i) relevant information that the Purchaser may have describing the physical characteristics of the Site, including the location of and access to the Delivery Point, surveys, evaluations, legal descriptions, data or drawings depicting existing conditions subsurface conditions and environmental studies, reports and investigations, (ii) tests, inspections and other reports dealing with Hazardous Substances and other conditions existing at the Airport or Site, including structural, mechanical and chemical tests, required by law and in possession of the Purchaser or required by the Seller's installation contractor and performed at the Seller's expense and (iii) any other information that the Purchaser may have and that is reasonably requested in writing by the Seller that is relevant to the Seller's performance of the installation, operation, maintenance and repair of the System;

(c) any Force Majeure Event or Preconstruction Contingency resulting in a request to make an adjustment to the terms of this Agreement pursuant to Section 2.3(b) shall have been resolved to the satisfaction of Seller;

(d) the Seller has entered into arrangements, on terms acceptable to it, under which funds, sufficient to procure and install the System, will be available to the Seller and the conditions to the first draw on such funds have been met;

(e) the Seller has entered into an engineering, procurement and construction

agreement for the System;

(f) the City and the Purchaser have entered into the City Solar Power Purchase Agreement in substantially the form attached as Exhibit D;

(g) Seller and the City have entered into the Site Lease;

(h) the City and the Local Distribution Company have executed and delivered an Interconnection Agreement under Local Distribution Company Rate RS-2 (Net Metering) for the Airport, in form and substance reasonably acceptable to the Seller; and

(i) the Purchaser has delivered any Lender Required Consents in form and substance satisfactory to any lender or lessor.

2.2 Conditions Precedent to the Obligations and Liabilities of Purchaser. The obligations and liabilities of the Purchaser under this Agreement (except Sections 2.3 and Article 4) shall be subject to the satisfaction or waiver by the Purchaser of each of the following conditions precedent.

(a) The representations and warranties of the Seller are true and correct as of the Notice to Proceed Date;

(b) The Seller shall have completed the requirements of Article 4 except obtaining Permits that by their nature cannot be obtained prior to construction.

(c) the Seller shall have obtained all Permits required by Applicable Law to commence construction, specifically including but not limited to preliminary interconnection approval by the Local Distribution Company, approval by PJM GATs for SREC generation and registration, all required FAA approvals, and local construction permits, with conditions reasonably acceptable to the Seller and shall have provided copies to Purchaser;

(d) any Force Majeure Event or Preconstruction Contingency resulting in a request to make an adjustment to the terms of this Agreement pursuant to Section 2.3(b) shall have been resolved to the satisfaction of Purchaser;

(e) Seller has caused to be delivered the Seller Guarantee and Seller Credit Support in accordance with Section 4.1(b);

(f) The City and the Purchaser have entered into the City Solar Power Purchase Agreement in substantially the form attached as Exhibit D;

(g) Seller and the City have entered into the Site Lease;

(h) the Purchaser and the Local Distribution Company have executed and delivered an Interconnection Agreement under Local Distribution Company Rate RS-2 (Net Metering) for the Airport, in form and substance reasonably acceptable to the Purchaser and the

City and approved by the Pennsylvania Public Utility Commission;

(i) any Lender Required Consents are in form and substance acceptable to the Purchaser and the City; and

(j) the Seller has delivered to the Purchaser certificates of insurance evidencing that the insurance required to be maintained by the Seller under this Agreement is in effect.

2.3 Satisfaction of Conditions Precedent.

(a) Each party shall exercise good faith and due diligence in satisfying the foregoing conditions precedent and giving prompt notice to the other party when such conditions precedent have been satisfied or waived in writing by the party whose obligation is conditioned thereon.

(b) If a Force Majeure event or Preconstruction Contingency prior to the Scheduled Commercial Operation Date would require a change in the design of the System or increase the price of components of the System, the parties will negotiate in good faith to amend this Agreement to modify the scope and performance parameters and reflect any resulting price adjustment (positive or negative) arising from such requirements. If Seller proposes such an amendment, Seller shall consult with Purchaser with respect to the procurement of any affected equipment or services and provide copies of bids or offers received for such equipment or services to permit the purchaser to evaluate proposed price adjustments. The aggregate of any increases to the year one price listed in Exhibit H shall not exceed a total price of [$\$76/MWh$]. If the parties cannot agree on appropriate adjustments within 180 days or such adjustments would exceed the limit specified in the previous sentence, then either party may terminate this Agreement as provided in Section 2.3 (e) or Section 10.4(c) as appropriate.

(c) Either party shall promptly notify the other party if any condition precedent is incapable of being satisfied.

(d) When both parties agree that all conditions precedent are satisfied or that they are prepared to waive any conditions not so satisfied the Seller and the Purchaser shall execute an instrument in the form of Exhibit E attached hereto (the “**Notice to Proceed**”) in which (i) each of them states that all of the conditions precedent to its obligations set forth in this Article 2 have been satisfied or waived and (ii) the Purchaser directs the Seller to begin the installation of the System.

(e) If either party delivers a notice that one or more conditions precedent cannot be satisfied pursuant to Section 2.3(b) above, or if any condition precedent is not satisfied or waived by 6 months from the execution date of this Agreement, in either case for reasons not due to the terminating party’s failure to comply with its obligations under Section 2.3(a), then (i) either party may at any time thereafter until such conditions have been satisfied or waived, by notice to

the other party, terminate this Agreement, (ii) neither party will be liable to the other for any such termination and (iii) each party will bear its own expenses attributable to the transactions contemplated by this Agreement; provided that if such termination is due to the failure of Seller to comply with its obligations under Section 2.3(a), such failure will be treated as an Event of Default, and without limiting Purchaser's remedies hereunder, Purchaser may draw on Seller's Credit Support to satisfy any claims or damages it may have.

2.4 Representations and Warranties. Seller represents and warrants that:

(a) it is duly formed and validly existing under the laws of the State of Pennsylvania and authorized to do business in the Commonwealth of Pennsylvania and has the full power, authority and legal right to enter into and perform this Agreement and the Site Lease, and its execution, delivery and performance thereof (A) will not violate any judgment, order, law or regulation applicable to Seller, including any provisions of its formation documents and (B) do not (1) conflict with, (2) constitute a default under or (3) result in the creation of any Lien on any assets of Seller under any agreement or instrument to which it is a party or by which it or its assets may be bound or affected;

(b) It is duly formed and validly existing under the laws of the State of Pennsylvania and authorized to do business in the Commonwealth of Pennsylvania and has the full power, authority and legal right to enter into and perform this Agreement and the Site Lease, and its execution, delivery and performance thereof (A) will not violate any judgment, order, law or regulation applicable to Seller, including any provisions of its formation documents and (B) do not (1) conflict with, (2) constitute a default under or (3) result in the creation of any Lien on any assets of Seller under any agreement or instrument to which it is a party or by which it or its assets may be bound or affected;

(c) this Agreement and the Site Lease have each been duly authorized, executed and delivered by such party and each constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganizations, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies;

(d) no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement or the Site Lease by Seller except those that have been duly obtained or made;

(e) there is no litigation or proceeding pending or, to its knowledge, threatened against or affecting Seller (A) challenging the validity of this Agreement or the Site Lease or the transactions contemplated thereby, (B) seeking to enjoin such Seller's performance hereunder or (C) that, if adversely determined, would materially adversely affect Seller's ability to perform its obligations hereunder;

(f) to its knowledge, there are no facts, circumstances or other matters that

may interfere with or delay the installation or operation of the System;

(g) it has no unpaid debt due and owing Purchaser or City and is not delinquent in the payment of any taxes or other assessments due to Purchaser or City, except such debts or obligations for which Seller has executed an agreement with The City of Philadelphia through its Department of Revenue to eliminate such delinquencies;

(h) it has obtained a valid current Commercial Activity License to do business in The City of Philadelphia;

(i) that neither Seller nor any of Seller's directors, officers, members, partners or employees, shall have any interest nor shall they acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with Seller's performance under this Agreement; and

(j) it shall require each subcontractor of Seller to: (i) hold a valid Commercial Activity License to do business in Philadelphia; and (ii) to execute a Certificate of Non-Indebtedness (as provided herein), and, to the best of Seller's information and belief after investigating, the representations made in such Certificate(s) of Non-Indebtedness are or will be, upon execution, true and correct.

ARTICLE 3 TERM; PURCHASE OPTION

3.1 Term. This Agreement will begin on the date hereof and, unless terminated earlier pursuant to the terms hereof, end on the twentieth anniversary of the Commercial Operation Date (the "**Initial Term**"). The Seller shall have the option, in its sole discretion, to renew this Agreement for five years at the Purchase Price for electricity then in effect by notifying the Purchaser of its intent to renew this Agreement 180 days before the date on which the Initial Term will end. If Seller does not exercise its option, Purchaser shall have the option to renew this Agreement for 5 years; provided that the Purchase Price for electricity shall be adjusted to the Fair Market Value of electricity at the time of renewal. Such five year extension by either party shall be referred to as the "**Renewal Term**", and together with the Initial Term, the "**Term**."

3.2 Removal of the System at Termination. Unless (i) the Purchaser exercises its option to purchase the System as provided in Section 3.3, following the expiration or earlier termination of the Site Lease, or (ii) or a termination this Agreement as a result of a Purchaser Default, the Seller shall remove the System from the Site and the Airport as soon as practical but in no event later than 60 days after such expiration or termination. The Seller shall return the Site to the condition that it was in on the date of this Agreement. If, by the end of such 60-day period, the Seller does not remove the System and/or restore the Site to the required condition, the Purchaser may remove the System and/or restore the Site and the Seller shall reimburse the Purchaser for the costs of doing so upon demand.

3.3 Purchase Option

(a) On any Purchase Date and, so long as a Purchaser Event of Default does not then exist, the Purchaser has an option to purchase the System for a purchase price equal to the greater of (i) the Fair Market Value of the System or (ii) the Early Termination Fee as of the Purchase Date set forth in Exhibit J. To exercise the purchase option, the Purchaser must give notice to the Seller of its intent to do so no later than 60 days prior to such Purchase Date. If the parties cannot agree on the Fair Market Value of the System within 30 days after the delivery of such notice, then they shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. If the parties cannot agree on the selection of an appraiser within 10 days, the appraiser will be jointly selected by an appraiser firm selected by the Seller and an appraisal firm selected by the Purchaser. The valuation made by the appraiser will be binding on the parties in the absence of fraud or manifest error. The costs of the appraisal will be borne by the parties equally.

(b) On the Purchase Date:

(i) the Seller shall surrender and transfer to the Purchaser all of the Seller's right, title and interest in and to the System, together with the Environmental Attributes and SRECs still associated with the Solar Project, free and clear of any Liens, provided that the Seller will retain all liabilities arising from or incurred in connection with the System prior to the Purchase Date;

(ii) the Purchaser shall pay the purchase price for the System to the Seller and assume all liabilities arising from or incurred in connection with the System from and after the Purchase Date;

(iii) the Seller shall assign all vendor warranties and SREC sales agreements then in effect, if any, to the Purchaser;

(iv) the Seller will grant, or cause to be granted, to the Purchaser a non-exclusive license to any proprietary intellectual property that the Purchaser deems is necessary or desirable to operate and maintain the System; and

(v) both parties shall:

(A) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in the Purchaser; and

(B) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals and such similar documents as may be necessary to complete the vesting of title to the System in the Purchaser.

ARTICLE 4
PRECONSTRUCTION PROVISIONS

4.1 Credit Support. Seller will be required to provide the Parent Guarantee on or prior to the Notice to Proceed Date. Seller shall also be required to provide an LoC in a form reasonably satisfactory to Purchaser (the “**Seller's Credit Support**”) in the amount of \$150,000. Seller's Credit Support shall be supplied from entities rated A-/A3 or better by S&P, Moody's or AM Best, as applicable. Seller Credit Support shall remain in effect through the Commercial Operation Date.

4.2 Plans and Specifications. Respecting the construction of the System made in or to the Site, Seller shall comply in all relevant respects with the Architectural and Engineering Standards promulgated by the City or the DOA (“A&E Standards”), as they may be modified or amended from time to time, currently found online at: <https://www.phl.org/business/design-code>, including any sustainability design standards required therein. If and to the extent the A&E Standards conflict with this Agreement or any other applicable standards, Seller shall inform the DOA of such conflict and the DOA shall make the determination as to which standard shall apply.

4.3 Construction Documents.

(a) Seller's Obligation. Seller shall submit to the City the Construction Documents (hereinafter defined), unless otherwise agreed in writing by the City. The Purchaser shall cause the City, within twenty (20) calendar days after receipt of the Construction Documents to review, provide comments to and/or approve such Construction Documents. Notwithstanding anything herein to the contrary, the City, in its sole discretion, reserves the right to reject any Construction Documents submitted and to require Seller to resubmit Construction Documents until they are satisfactory to the City. The Construction Documents shall: (i) be signed and sealed by Seller's architect licensed in the Commonwealth of Pennsylvania; (ii) in connection with mechanical, and electrical systems and structural drawings, be signed by engineers licensed in the Commonwealth of Pennsylvania; and (iii) comply with the CAD requirements set forth in the A&E Standards. The Construction Documents submission shall include the following:

(b) Deliverables. One set of electronic “pdf” files of the Construction Documents shall include.

- (i) One set of reproducible drawings.
- (ii) Six sets of bond prints.
- (iii) Three construction manual documents (which contain any required design calculations, technical specifications and construction schedule, inclusive of long lead items and commissioning of systems).

(c) The **Construction Documents** shall mean a complete set of the following architectural, mechanical, structural, electrical, and fire alarm/fire protection documents, as applicable:

(i) Mechanical: (1) site plan; (2) symbol legend for systems must be shown on all appropriate drawings; (3) fixture layout; and (4) signage drawings indicating the size of letters, materials, colors, finishes, mounting brackets, method of illumination, etc.

(ii) Structural: Structural reinforcement design/calculations for new equipment. All equipment installations and structural modifications must be installed in accordance with the recommendations of a structural engineer licensed in the Commonwealth of Pennsylvania.

(iii) Electrical: (1) complete electrical drawings, site plans, details, and specifications including lighting and signage prepared by an engineer licensed in the Commonwealth of Pennsylvania; (2) detail schedule and one-line diagram, including all interconnection specifications; (3) details of interface with the City's electrical and telephone systems; and (4) completed electrical load schedule.

(iv) Fire Alarm/Fire Protection: (1) fire alarm design drawing(s); and (2) complete sprinkler drawings and specifications prepared by a licensed engineer in the Commonwealth of Pennsylvania.

4.4 Effect of Review and Inspection. The rights of the Purchaser to review the Construction Documents and to monitor and inspect Seller's Work will not create the right to stop or otherwise impede the Seller's Work. In no event will the exercise of, or failure to exercise, rights to monitor or inspect the Seller's Work or to review the Construction Documents constitute acceptance or approval thereof or relieve the Seller of any of its obligations under this Agreement.

4.5 Permits. Seller, at its cost, shall be responsible for completing, preparing and submitting and obtaining all applications, plans, permits, licenses, consents waivers, variances, registrations and approvals, including building and stormwater management permits/approvals, and all other documentation required from all applicable Governmental Authorities, including, the City of Philadelphia, needed to construct and operate the System (collectively, the "**Permits**"). Seller shall be responsible for the payment of any applicable Permit and impact fees or other similar costs. After review and approval applications for the foregoing Permits, the Purchaser shall cause the City to support and reasonably cooperate, at Seller's cost and expense, with Seller's applications, plans, other documentation and related efforts for obtaining such Permits and other required approvals. Seller's Obligation to obtain and maintain Permits shall continue for the remainder of the Term.

4.6 Additional Preconstruction Obligations. Prior to the Notice to Proceed Date

Seller shall:

a. Participate in one or more pre-construction conferences with the City and Seller's project manager, as requested by the City, to review Seller's submittals and discuss the project scheduling.

b. Provide the City with the contact information for all contractors performing any of Seller's Work including contact name, address, phone, fax, cell phone, pager and email address.

c. Cause to be executed and delivered to the City a Waiver of Liens to be filed with the Prothonotary of the City of Philadelphia, Pennsylvania, which Waiver of Liens must first be approved in writing by the City prior to the commencement of any of Seller's Work.

ARTICLE 5 OWNERSHIP OF THE SYSTEM

5.1 Ownership of the System. The System is, and will remain, the personal property of the Seller, unless the Purchaser exercises the Purchase Option in Section 3.3. The Seller may file one or more precautionary UCC Financing Statements or fixture filings in such jurisdictions as it deems appropriate with respect to the System in order to protect the rights of the Seller or any mortgagee in the System. The System will not constitute real property or fixtures regardless of the manner in which it is installed.

5.2 Taxes. During the Term of this Agreement, Seller shall pay or cause to be paid to the applicable taxing authority, no later than thirty calendar days before each installment is due, any and all Taxes assessed or imposed upon the Site, including the System, or any portion thereof associated with the Site. Within fifteen calendar days upon request by the City, Seller shall provide the City with evidence reasonably acceptable to the City that each such installment has been paid.

5.3 No Liens. The Purchaser may not cause or permit any Liens to be placed against the System or any interest therein arising from the action or inaction of the Purchaser. If any such Lien attaches, the Purchaser shall cause the Lien to be removed within 20 days of notification thereof by the posting of a bond, payment of Lien or otherwise. If the Purchaser does not remove the Lien within such period, the Seller may cause the Lien to be removed and charge to the Purchaser any costs and expenses reasonably incurred by the Seller in doing so.

ARTICLE 6 INSTALLATION OF THE SYSTEM

6.1 Seller's Work

(a) The Seller shall provide, in a good and workmanlike manner, all services, supervision, labor, materials and equipment, supplies, miscellaneous materials, and machinery necessary to design, engineer, procure, construct, install and commission the System (the **Seller's Work**). The Seller's Work includes the following activities:

- (i) the preparation and completion of a detailed design of the System;
- (ii) the acquisition, delivery, construction, assembly and installation of the System at the Site, including the procurement, expediting, inspection, installation, construction, assembly and erection of all required structures System components in accordance with Exhibit B (Description of the System);
- (iii) the interconnection of the System with the electrical system of the Airport in accordance with the requirements of the Local Distribution Company;
- (iv) commissioning and testing the System; and
- (v) the performance of each of the Contractor's other obligations under this Agreement, to be completed as a condition to Final Completion.

(b) Upon execution of the Notice to Proceed, the Contractor shall promptly begin and diligently prosecute to completion the Seller's Work.

6.2 Project Manager. The Seller shall employ a competent individual to act as a project manager and be responsible for the coordination and performance of the Seller's Work and be authorized to commit the Seller with regard to manpower, schedule, coordination, and cooperation. The project manager must have at least two years of documented experience in responsible field supervision for projects of comparable size and complexity. The project manager or its designee must be present at the Site during normal working hours while installation is in progress. The Seller shall give the Purchaser advance notice if it intends to remove or replace the project manager. In the event the project manager fails to perform its duties under this Agreement, the Seller shall replace the project manager with an individual with the qualifications described in this Section 6.2.

6.3 Training. The Seller shall provide such training to employees or contractors designated by the Purchaser (i) as is necessary for Purchaser and the City to use the System dashboard to monitor the performance of the System, (ii) as needed for Airport personnel to understand the details of the electrical interconnection between the System and the Airport and all procedures necessary in the event of an emergency affecting the System to avoid damage to the Airport electrical system, and (iii) other needed training identified by the City or Airport personnel.

6.4 Subcontractors.

(a) The Seller will be as fully responsible to the Purchaser for the acts and omissions of subcontractors or persons directly or indirectly employed by them as it is for the acts or omissions of persons employed by the Seller. Nothing in this Agreement will create any contractual relationship between any subcontractor and the Purchaser. The Purchaser will have no obligation to pay directly, or cause the payment of, any subcontractor. The employment of any subcontractor will not relieve the Seller of any of its obligations under this Agreement.

(b) The Seller hereby assigns to the Purchaser, its successors and assigns all of the Seller's right, title, and interest in all agreements with subcontractors having a value greater than \$200,000, provided that such assignment will only be effective upon (i) acceptance of such assignment by the Purchaser by notice to the subcontractor and (ii) the termination of this Agreement for an Event of Default by the Seller. Until the time, if any, that such assignment is accepted, the Purchaser will not be responsible for performance under this assignment or under any agreement with any subcontractor and no subcontractor will have any claim or cause of action against the Purchaser. Upon the Purchaser's acceptance of any such assignment, the Seller will have no further obligations under the assigned agreement except with respect to matters arising from the conduct of the Seller and the applicable subcontractor prior to the date of such acceptance. All such agreements with subcontractors must include a provision agreeing to and acknowledging this assignment.

6.5 Right to Inspect. The Purchaser and the City shall have the right upon prior oral or written notice to Seller (or without any notice whatsoever in case of emergency), to enter upon the Site for the purpose of inspecting the System and/or of ensuring that Seller's Work complies with the terms and conditions herein.

6.6 Progress Reports. The Seller shall deliver to the Purchaser within 5 days after the 15th and final days of each month prior to the Commercial Operation Date a progress report containing, at a minimum, a statement of percentage completion and a summary of activities undertaken during such month and activities to be undertaking during the following month. Purchaser project management (DOA) will determine and review progress report requirements during construction.

6.7 Performance Tests. Following the completion of construction and installation of the System, the Seller shall conduct a thorough and systematic performance test of each element of the System in accordance with Exhibit G. Testing must be designed to determine if the System is functioning in accordance with both its published specifications and the requirements of this Agreement including re-testing of PNE switchgear with PECO and Purchaser present, and testing of the interconnection to PNE switchgear to the satisfaction of the Purchaser. The Seller shall notify the Purchaser and the City at least seven days prior to the date scheduled for each scheduled test and the Purchaser and the City and their invitees will have the right to be present at any or all such tests. The Seller shall correct and adjust all deficiencies in the Seller's Work that are observed during System commissioning procedures.

6.8 Commercial Operation

(a) “**Commercial Operation**” means that all of the following conditions have been met:

(i) the construction and installation of the System has been completed in accordance with the terms of this Agreement and the plans and specifications accepted by the Purchaser pursuant to Section 6.2;

(ii) all requirements of the Interconnection Agreement have been met;

(iii) the performance tests have been completed in accordance with Exhibit G and have demonstrated that the performance criteria set forth in Exhibit G have been achieved; and

(iv) the Seller has delivered to the Purchaser a certificate executed by a duly authorized representative of the Seller certifying that the foregoing conditions have been met.

(b) The Seller shall cause Commercial Operation to occur on or before the date that is 270 days following the Notice to Proceed Date. Such date will be extended to the extent that the Seller has demonstrated to the reasonable satisfaction of the Purchaser that a Force Majeure event has delayed construction or testing. If Commercial Operation has not been achieved by such date (as it may have been so extended, the (“**Scheduled Commercial Operation Date**”)), the Seller shall pay the damages (“**Delay Damages**”) to the Purchaser for the period of delay in an amount equal to One Hundred Fifty dollars (\$150) per day. Seller’s failure to achieve Commercial Operation within 180 days of the Scheduled Commercial Operation Date constitutes an Event of Default under this Agreement.

6.9 Final Completion.

(a) “**Final Completion**” will be achieved as of the latest date that any of the following conditions has been satisfied or deemed to have been satisfied:

(i) the performance of Seller’s Work is complete, including all punch list items;

(ii) the Site and the Airport are clear of all liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Seller’s Work;

(iii) the Contractor has completed the training program described in Section 6.3 above;

(iv) the Contractor has delivered copies of the Local Distribution Company's final interconnection approval and other post-Notice-to-Proceed Permits as required in order for Seller to operate the System;

(v) the Contractor has delivered Two (2) disks (or other the City approved media) with electronic data and two (2) sets of reproducibles, stamped and approved by the City, of As-Built drawings showing all changes made from the final approved drawings. These documents must be provided to the City prior to the return on any contractor deposits. Electronic files "pdf" and native files shall be provided;

(vi) there are no outstanding Seller Events of Default or events that with the passage of time or the giving of notice would become Seller Events of Default; and

(vii) the Seller has delivered to the Purchaser a certificate (the "**Final Completion Certification**"), certifying that all of the preceding conditions in this subsection (a) have been satisfied; provided that, if the Purchaser subsequently raises any valid objection to such certificate in accordance with subsection (b) below, such certificate will not be deemed to be delivered until such objection is satisfied.

Within 30 days of receipt of the Final Completion Certification, the Purchaser shall either approve the Final Completion Certification or state its objection and provide the Seller with a detailed explanation therefor. If the Purchaser fails to approve or object to the Final Completion Certification within such 30-day period, the Final Completion Certification will be deemed to have been approved. If the Purchaser has approved or been deemed to have approved the Final Completion Certification, or the Purchaser has objected to the Final Completion Certification and such objection has subsequently been determined to be unsubstantiated, the approval or deemed approval will be considered to have been given as of the original date of delivery of the Final Completion Certification. If the Purchaser validly objects to the Final Completion Certification, then the date of approval will be considered to be the date that the Contractor has satisfied such objection.

6.10 Vendor Warranties. The Seller shall acquire all material original and replacement components of the System pursuant to a written agreement that includes a warranty whose duration and terms are comparable to or more favorable than others in general use in the solar photovoltaic industry. Each such agreement must include a provision permitting the Seller to assign the warranties therein to the Purchaser.

ARTICLE 7 SYSTEM OPERATIONS

7.1 General Responsibilities. The Seller shall be solely responsible for the operation, repair, monitoring and maintenance of the System and the costs incurred in connection therewith.

7.2 Malfunctions; Emergencies

(a) Each party shall notify the other party upon learning of a material malfunction or an emergency condition at the Site. The Seller shall respond to an emergency promptly and must have personnel available to respond at all times.

(b) In the event of a material malfunction or emergency of or related to the System that creates an imminent risk of damage or injury to person or property, the Purchaser may (but will not be obligated to) take such action as the Purchaser deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System. The parties agree that only the Seller may reconnect the system.

7.3 Metering

(a) Seller shall install metering equipment and any related data processing equipment at the Delivery Point to be used for the registration, recording and transmission of information regarding Metered Output. Seller shall provide Purchaser and the City, read-only access to Seller's PJM Power Meter account and Market Settlements Reporting System as well as a remote dashboard to permit Purchaser and the City to monitor System operations.

(b) The Seller shall inspect and test the metering equipment upon its initial installation and annually thereafter and provide the Purchaser with the results thereof. The Seller shall give the Purchaser and the City at least five days' notice of any inspection and testing of the metering equipment. The Purchaser and the City may have a representative present at any time that the Seller reads or inspects and tests the metering equipment. At the Purchaser's request, the Seller shall inspect and test the metering equipment more frequently. If such additional inspection and test determines that the metering equipment is accurate and in good working order, the Purchaser shall reimburse the Seller for the costs of performing such inspection and test. If such additional inspection and test determines that the metering equipment is inaccurate or defective, the Seller will not be entitled to reimbursement and shall adjust, repair or replace, and retest the metering equipment at its sole expense.

(c) If, on testing, the measurement made by the metering equipment varies by more than two percent from the measurement made by the standard measuring equipment used in the test, (i) an adjustment will be made correcting all measurements made by the metering equipment for (A) the actual period during which inaccurate measurements were made, if such period can be determined or, if not, (B) the period immediately preceding the test equal to one-half the time from the date of the previous test; and (ii) the Purchaser or the Seller, as appropriate, shall refund or pay to the other party the amount by which actual payment made hereunder represents an overpayment or underpayment based on corrected measurements.

(d) If, during any period, a reading cannot be obtained from the metering equipment, the parties shall estimate the amount of electricity delivered to the Delivery Point during such period based on deliveries during periods of similar operating conditions.

7.4 Alterations to the System. After the Commercial Operation Date, the Seller may complete punch list items arising in the course of the initial construction and repair or replace damaged or inoperable parts of the system as required to meet its obligations under this Agreement. Seller may not increase or decrease the capacity of the System, make changes that affect the Airport's electrical system, or make other improvements or changes to the System or remove, relocate or reconstruct any part of the System without the Purchaser's approval, not to be unreasonably withheld.

7.5 Damage to the System. If the System is materially damaged or destroyed, or suffers any other material loss, the Seller shall, unless otherwise agreed by the Purchaser, as soon as practicable, either replace the System with an equivalent system or restore the System to the condition that it was in prior to such damage, destruction or loss.

7.6 Unavailability of Net Metering Tariff. If the Local Distribution Company discontinues its net metering tariff or the net metering tariff is otherwise unavailable to the Purchaser, Seller shall take all necessary steps at its cost and expense (to the extent not already taken) to register the System as a Qualified Facility under the Public Utility Regulatory Policy Act of 1978 or as an Exempt Wholesale Generator that in either case can make wholesale sales of electricity at market based rates, and the Purchaser will [*purchase/cause the City or the City's retail electricity supplier to purchase*] any power that is in excess of the Airport's needs on behalf of the City.

ARTICLE 8 PURCHASE OF ELECTRICITY AND SRECS

8.1 Purchase of Electricity

(a) The Seller agrees to sell, and the Purchaser agrees to purchase, the Metered Output of the System at the electricity Purchase Price in effect for the Operating Year in which the month occurs as set forth in Exhibit H. Delivery of all electricity sold and purchased hereunder shall be made at the Delivery Point.

(b) All electricity delivered by the Seller must meet all requirements of the Interconnection Agreement.

8.2 Purchase of SRECS

(a) The Seller agrees to sell, and the Purchaser agrees to purchase, all SRECs associated with the Metered Output of the System at the SREC Purchase Price in effect for the Operating Year in which the month occurs as set forth in Exhibit H. SRECs shall be delivered and registered in accordance with Section 8.8.

(b) Purchase of the SRECs shall entitle Purchaser to all Environmental

Attributes associated with the Metered Output.

8.3 Failure to Deliver. If, in any Operating Year, the Seller fails to deliver at least **80%** of the Estimated Annual Production for such year set forth in Exhibit I (the “**Annual Delivery Guarantee**”) less any amount not produced as a result of a Force Majeure event:

(a) the Seller shall pay to the Purchaser within 30 days after the end of such Operating Year an amount (the “**Purchaser Make-Up Amount**”) equal to:

(i) the positive difference, if any, between (i) the average of day-ahead prices at PJM pricing node ID 51297 (PECO Transmission Zone) for electricity delivered between the hours of 8 a.m. and 4 p.m. during such Operating Year minus (ii) the Purchase Price in effect for such Operating Year; times

(ii) the Annual Delivery Guarantee for such Operating Year minus the number of kWhs delivered during such Operating Year (the “**Annual Shortfall**”).

(b) The Seller shall deliver substitute SRECs of the same vintage in an amount equal to the Annual Shortfall, or in the event that such substitute SRECs are not available for purchase, Seller shall credit Buyer in an amount equal to the midpoint of the then-current over-the-counter PA SREC market, multiplied by the Annual Shortfall.

8.4 Failure to Accept. If the Seller is unable to deliver electricity to the Delivery Point during any period as a result of any act or omission of the Purchaser that is not excused by a Force Majeure event (excluding any emergency action taken in good faith pursuant to Section 7.2), the Purchaser shall pay to the Seller an amount equal to the combined Purchase Prices for electricity and SRECs then in effect under Exhibit H multiplied by the amount of Undelivered Electricity for such period (the “**Seller Make-Up Amount**”).

8.5 Statements; Payment. Following the Commercial Operation Date, the Seller shall submit a statement to the Purchaser on or before the 15th day of each month showing the Metered Output delivered to the Purchaser at the Delivery Point in the prior month, the total amount due for electricity and SRECs pursuant to Sections 8.1 and 8.2, and, in the statement for the last month of an Operating Year, any Purchaser Make-Up Amount payable with respect to such Operating Year. If any Purchaser Make-Up Amount is payable with respect to such prior month, such amount will be netted against the amount payable to the Seller. Each statement shall be accompanied by supporting documentation and calculations reasonably acceptable to the Purchaser. The Purchaser shall pay all undisputed amounts within 30 days after receipt of the related statement.

8.6 Title; Risk of Loss. Title to and risk of loss related to the electricity generated by the System will pass and transfer from the Seller to the Purchaser at the Delivery Point.

8.7 Costs and Charges. The Seller will be responsible for all costs and charges imposed by third parties, if any, in connection with the production and delivery of the Metered

Output until electricity is delivered at the Delivery Point. The Purchaser will be responsible for all costs and charges imposed by third parties, if any, in connection with distribution of electricity from the Delivery Point to the Airport.

8.8 Registration of Renewable Energy Credits. With respect to the SRECs associated with the Metered Output, Seller shall provide all necessary assistance for the City to register the System and its output to [the City's account] in the PJMGATS.

8.9 Records; Audits

(a) Seller shall keep and maintain at all times during the Term accurate books of account and records in accordance with generally accepted accounting principles, including such books as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying Seller's performance hereunder. All such records shall be retained by Seller for at least seven calendar years following the calendar year in which such records were created.

(b) Purchaser and its agents will have the right during normal business hours, to examine and copy the records maintained by the Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify Seller's performance of its obligations hereunder. Such examination will be made at Purchaser's sole expense unless a material discrepancy is discovered, in which event the examination shall be at Seller's expense.

**ARTICLE 9
PURCHASER'S RIGHT OF ACCESS**

9.1 Access to the Site. At reasonable times and with reasonable notice to the Seller, the Purchaser may come onto the Site to inspect the Site and the System. The Seller will have the right to accompany the Purchaser during such inspections. The Purchaser may come onto the Site at any time and without notice in the event of emergencies as provided in Section 7.2.

**ARTICLE 10
FURTHER AGREEMENTS**

10.1 Insurance. The Seller shall maintain the insurance set forth in Exhibit K. Seller shall, at the request of Purchaser, deliver to Purchaser certificates of insurance evidencing that such insurance is in effect.

10.2 Indemnification

(a) The Seller agrees that it will protect, indemnify, and hold harmless the Purchaser Indemnified Persons from and against all liabilities, causes of action, damages, claims,

demands, judgments, losses, penalties, costs (including, but not limited to, litigation and settlement costs and counsel and expert fees and expenses), expenses, suits, and actions (collectively, “**Claims**”), and will defend the Purchaser Indemnified Persons in any suit, including appeals:

(i) brought by third parties to the extent occasioned wholly or in part by the act or omission or negligence or willful misconduct of the Seller or Seller’s agents, subcontractors, independent contractors, suppliers, employees or servants in connection with this Agreement or the Site Lease;

(ii) arising from failure to pay any subcontractors or suppliers;

(iii) arising from any breach, violation or nonperformance of any covenant, term or condition of this Agreement or the Site Lease to be performed or observed by Seller;

(iv) arising from or based on the presence of any Hazardous Substances on the Site for which the Seller is responsible under Section 10.7 or any resulting contamination or adverse effects on the environment;

(v) arising from a breach of Airport Security as specified in Section 13.4;

(vi) arising from any loss of data, data security breach, or any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret); or

(vii) arising from or based on the Seller’s failure to comply with Applicable Standards.

(b) If a Purchaser Indemnified Person entitled to indemnification under this Agreement (an “**Indemnified Party**”) receives notice or has knowledge of any Claim that may result in a claim for indemnification hereunder, it shall promptly give notice of such Claim to the Seller (the “**Indemnifying Party**”) which notice must include a reasonably detailed description of the facts and circumstances relating to such Claim. Failure promptly to give such notice or to provide such information and documents will not relieve an Indemnifying Party of any obligation of indemnification it may have hereunder unless such failure materially diminishes the Indemnifying Party’s ability to respond to such Claim. The parties shall consult with each other regarding and cooperate in respect of the response to and the defense of any such Claim and the Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party, will be entitled to assume and control the defense or to represent the interests of Indemnified Party, which will include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement; provided, however, that the Indemnified Party will have the right to

retain separate counsel in respect of such Claim at its own expense unless the retention of such counsel has been specifically authorized by the Indemnifying Party.

10.3 Liquidated Damages Not a Penalty; Limitation of Liability

(a) The definitions of the Purchaser Make-Up Amount and the Seller Make-Up Amount are each intended to provide a methodology for the calculation of actual damages to the party to which such amounts are owing and do not constitute a penalty. The parties acknowledge that a party's actual damages under the circumstances giving rise to the obligation to pay the Early Termination Fee or Delay Damages may be impractical and difficult to accurately ascertain and that the amount of such Early Termination Fee or Delay Damages constitutes fair and reasonable liquidated damages to be borne by such party in lieu of its actual damages.

(b) The payment by a party of an Early Termination Fee, Delay Damages, EOP Damages, Wage Damages, the Purchaser Make-Up Amount or the Seller Make-Up Amount (each, a "**Damage Payment**") will be such party's sole liability, and the receiving party's sole remedy, with respect to the circumstances giving rise to the obligation to make such payment.

(c) Notwithstanding any other provision of this Agreement, except for specified Damage Payments, neither party will be liable under this Agreement to the other party for any indirect, special, punitive, incidental or consequential damages, including loss of anticipated profits, whether in contract or tort (including the negligence or strict liability of the party whose liability has been so limited) or otherwise, except as specifically provided with respect to Damage Payments.

10.4 Force Majeure

(a) If, as a result of a Force Majeure Event, either party is prevented from performing or is delayed in the performance of any of its obligations under this Agreement (other than an obligation to pay money), such prevention of or delay in performance will, subject to such party's satisfaction of the conditions precedent in subsection (b) below, be excused during any period in which such performance is prevented or delayed by an Force Majeure event, and for such period thereafter as necessary to correct the adverse effect of such Force Majeure event; provided that the failure to pay any amounts owed hereunder (whether accruing prior to or during the Force Majeure event) in a timely manner will not be excused by an Force Majeure event. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that in no event will any Force Majeure event extend this Agreement beyond its Term.

(b) A party will be excused from performance hereunder as a result of Force Majeure event subject to the following conditions: the affected party shall (i) give the other party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three (3) Business Days after the commencement of the Force Majeure event

further describing the particulars of the occurrence of the Force Majeure event, and (ii) uses its commercially reasonable efforts to (A) mitigate the impact of the Force Majeure event on its performance, (B) pursue insurance and any other third-party reimbursement that may reasonably be expected to be obtained with respect to the Force Majeure event and (C) overcome the prevention of or delay in performance, and performance is resumed at the earliest practicable time after cessation of the Force Majeure event.

(c) If an affected party fails to substantially perform its obligations under this Agreement on account of a Force Majeure event for a period exceeding 180 days after the occurrence of such Force Majeure event, then the non-affected party shall have the right to terminate the Agreement after thirty (30) days written notice to the affected party; provided that such 180 day period may be extended, by the written agreement of both parties, for an additional 180 days if (i) such Force Majeure event is not remedied within the original 180-day period with reasonable due diligence; (ii) such Force Majeure event may reasonably be expected to be remedied within such additional 180-day period, and (ii) the affected party promptly undertakes to remedy such Force Majeure event and continues with reasonable diligence to effect such remedy within the additional 180-day period.

10.5 Release of Information

(a) Public Announcements. Seller may not issue or make any public announcement, press release or statement relating to this Agreement or the System unless such public announcement, press release or statement is issued jointly by the Parties or, prior to the release of the public announcement, press release or statement, Seller furnishes Purchaser with a copy of such announcement, press release or statement, and obtains the approval of the Purchaser, such approval not to be unreasonably withheld, conditioned or delayed; provided that, notwithstanding any failure to obtain such approval, Seller shall be prohibited from issuing or making any such public announcement, press release or statement relating to this Agreement if it is necessary to do so in order to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over Seller or its Affiliates. The Parties hereby agree to draft a joint public statement that can be used and issued by both Parties within 30 days of the Effective Date.

(b) Right to Know Law. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement.

(i) The City or the Purchaser shall notify the Seller using the legal contact information provided in this Agreement if the City or Purchaser needs the Seller's assistance in any matter arising out of the Right to Know Law (“**RTKL**”). The Seller shall notify the City and Purchaser in writing of any change in the name or the contact information within a reasonable time of the change.

(ii) Upon notification from the City or the Purchaser that the City or the Purchaser requires the Seller's assistance in responding to the RTKL request

("Requested Information"), Seller shall have five Business Days from receipt of notification from the City or the Purchaser to provide input on the release of the requested information as the City may request in order to comply with the RTKL.

(iii) The City's or the Purchaser's determination as to whether the Requested Information is a public record is dispositive of the question as between the Parties. The Seller agrees not to challenge the City's or the Purchaser's decision to deem the Requested Information a public record. If, upon review of the input provided by the Seller, the City or the Purchaser decides to release the Requested Information in response to the RTKL request, the Seller will not challenge or in any way hold the City or the Purchaser liable for such a decision.

(iv) The Seller agrees to abide by any decision to release a record of the City or the Purchaser to the public made by the Office of Open Records, or by the Pennsylvania courts. The Seller agrees to waive all rights or remedies that may be available to it as a result of the City's disclosure of Requested Information pursuant to the RTKL. The Seller's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Seller has the Requested Information in its possession.

10.6 Compliance With Standards. The Seller shall conduct, or cause to be conducted, all Seller's Work and all other activities and obligations to be conducted by the Seller hereunder in accordance with Applicable Standards.

10.7 Hazardous Substances. The Seller shall not cause or permit any Hazardous Substances to be brought onto, generated at or released from the Site except any Hazardous Substance that is contained in the System or related to the construction or operation of the System in compliance with Applicable Law. The Seller will have the exclusive responsibility for the detection, monitoring, handling, removal, transport, storage and disposal of, and remediation of the Site and the Airport made necessary from, any Hazardous Substance that is brought onto the Site or the Airport by the Seller or its subcontractors.

ARTICLE 11 DEFAULT AND REMEDIES; TERMINATION

11.1 Events of Default. Each of the following will be an "Event of Default" with respect to a party:

(a) such party fails to pay any amount due under this Agreement within five days of the date on which such amount was due and such failure continues for more than five days after receipt of notice from the other party;

(b) such party fails in any respect in the observance or performance of any covenant, condition or agreement of such party under this Agreement and such default continues for 30 days after written notice from the other party or such longer period (not to exceed an additional 60 days) as may be reasonably necessary to cure such failure; provided that, in the latter case, such party proceeds with all due diligence to cure such failure curable within such period of time;

(c) any representation or warranty made by such party in this Agreement was false or misleading in any respect when made;

(d) such party (i) commences a voluntary case under any bankruptcy law or any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (ii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against the other party in an involuntary case under any bankruptcy law; (iii) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (iv) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (v) makes a general assignment for the benefit of its creditors; (vi) takes any corporate or other action for the purpose of affecting any of the foregoing; or (vii) any involuntary bankruptcy proceeding is commenced against such party and is not dismissed or discharged for 60 days;

(e) if Seller and/or any Affiliate and/or any assignee shall be in default under any lease or agreement with Purchaser or the City or any Department thereof, or hereinafter enters into the City or any Department thereof, including without limitation the Site Lease;

(f) such party fails to provide or maintain in full force and effect any insurance required by this Agreement.

As to Seller, the events specified in Sections 6.2(b), 12.4(d) and 12.5(d) shall also be Events of Default.

11.2 Remedies for a Seller Event of Default. If an Event of Default by the Seller occurs, the Purchaser may terminate this Agreement and pursue all remedies available to it at law or in equity subject to Section 10.3. In addition, at the Purchaser's election, the Purchaser may take possession of the System as if it had exercised its Purchase Option under Section 3.3 but for a purchase price equal to the lesser of (i) the Fair Market Value of the System or (ii) the Early Termination Fee as of the Purchase Date set forth in Exhibit J, and provided that Purchaser may offset any damages it may have as a result of Seller's default against the purchase price.

11.3 Termination for a Purchaser Event of Default. If an Event of Default by the Purchaser occurs, the Seller may terminate this Agreement and, in such case, at the Seller's election, (a) the Purchaser shall pay to the Seller the Early Termination Fee and take possession of the System as if it had exercised its Purchase Option under Section 3.3 or (b) the Seller shall remove the System from the Airport and the Site as soon as practical and the Purchaser shall

reimburse the Seller the costs of removal and relocation of the System and pay all Seller Make-Up Amounts until the Seller relocates the System but not to exceed a period of 90 days. These remedies, and the Seller's election, are exclusive as provided in Section 10.3(b).

11.4 Effect of Termination. Upon termination of this Agreement, the obligations of the parties will cease; provided that any obligation for the payment of money, arising from the conduct of the parties pursuant to this Agreement prior to such termination and the parties' obligations will not be affected by such termination and will remain in full force and effect and the parties' rights and obligations under the following sections will remain in full force and effect:

- (a) Section 3.2 (relating to removal of the System);
- (b) Section 10.2 (relating to indemnification);
- (c) Section 10.3 (relating to limitation of liability);
- (d) Section 10.5 (relating to release of information);
- (e) Article 1 (relating to definitions);
- (f) this Article 11; and
- (g) Article 14 (miscellaneous provisions).

ARTICLE 12 STANDARD CITY PROVISIONS

12.1 Standard City Provisions. Seller shall comply with the City's Standard Provisions set forth in Exhibit L.

12.2 Antidiscrimination Policy.

Executive Order 1-21. In accordance with Executive Order 1-21 ("**Antidiscrimination Policy**"), which may be accessed using the following link: <https://www.phila.gov/ExecutiveOrders/Executive%20Orders/eo99327.pdf>, the City, acting through its Office of Economic Opportunity ("**OEO**"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("**MBE**"), Woman Business Enterprises ("**WBE**") and Disabled Business Enterprises ("**DSBE**") (collectively, "**M/W/DSBE**") in City Contracts and certain leases. The purpose of the Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by meaningfully increasing opportunities for the participation by M/W/DSBEs in City Contracts and certain leases at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special

Projects, as well as certain leases. Seller agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs for this Agreement, OEO has established the following participation ranges which relate as a percentage of Seller's total costs for the design and construction of the System:

MBE 13% - 15%
and
WBE 7% - 10%

These ranges represent the percentage of M/W/DSBE participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through Seller's exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs. Seller agrees, without limitation, to submit documentation responsive to each of the participation ranges established for this Agreement. Capitalized terms used in this Section and not otherwise defined herein shall have meaning ascribed to such terms in the Antidiscrimination Policy. In addition to the M/W/DSBE participation ranges, Seller agrees to exhaust its Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons for the System at the following levels:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

(a) General Requirements. In furtherance of the purposes of the Antidiscrimination Policy, Seller agrees to the following:

(i) Seller, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) (“**M/W/DSBE Subcontract(s)**”) with M/W/DSBEs as participants under this Agreement for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation form attached hereto and made a part hereof as **Exhibit M** (“**Contract Commitment(s)**”).

(ii) Seller will only receive credit towards the participation ranges for work performed by an M/W/DSBE that is a Commercially Useful Function. An M/W/DSBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the services to be performed in accordance with the NOCO) which is worthy of the dollar amount of the M/W/DSBE Subcontract and the M/W/DSBE carries out its responsibilities by managing and supervising the services

involved and actually self-performing at least twenty percent (20%) of the services of the Subcontract with its own employees. For suppliers, an M/W/DSBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished. Commercial usefulness will be evaluated and determined by the OEO as informed by prevailing industry standards and the M/W/DSBE's NAIC codes. Participation that is not commercially useful will not be counted.

(iii) In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g., MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Seller will note with its submission which category, MBE or WBE, is submitted for credit.

(iv) Seller shall secure the prior written approval of the OEO before making any changes or modifications to any Contract Commitments made by Seller herein, including, without limitation, substitutions for its MBEs and/or WBEs, changes or reductions in the services provided by its M/W/DSBE participants, or changes or reductions in the dollar amounts and/or percentage value paid to its M/W/DSBE participants.

(v) Seller shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments. Seller shall maintain all documentation related to this Section for a period of five (5) years from the termination or earlier expiration of this Agreement.

(vi) Seller agrees that the Purchaser or the City may, in their reasonable discretion, conduct periodic reviews to monitor Seller's compliance with the terms of this Antidiscrimination Policy.

(vii) Seller agrees that in the event the Purchaser or the City determines that Seller has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the Purchaser or the City may, in addition to any other rights and remedies it may have under the Agreement, which includes termination of the Agreement, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

(A) Debar Seller from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

(B) Require that Seller take corrective action to effectuate its Contract Commitment. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, charge to Seller an amount equal to the M/W/DSBE shortfall, which amount shall be collected and considered not as a penalty, but as liquidated damages for Seller's failure to comply with the Contract Commitment made under this Agreement. Any charges made under this provision shall not duplicate charges imposed as additional rent under the Site Lease.

(viii) No privity of contract exists between the Purchaser or City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Agreement except such rights or remedies that the M/W/DSBE participant may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the Purchaser and the City and failure to enforce any provision or the Purchaser's or City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the Purchaser's or City's rights in connection with this Agreement nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

(b) Criminal Liability for Fraudulent or False Statements. Seller hereby verifies that all information submitted to the City in connection with the Antidiscrimination Policy is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two (2) years.

ARTICLE 13 REGULATORY REQUIREMENTS AND INTERPRETATION

13.1 Nature of Agreement. This Agreement is entered into by the parties to document the terms and conditions upon which the Purchaser will purchase from Seller, and Seller will sell to Purchaser, the entire output of the System and as such constitutes an agreement relating to the purchase and sale of electrical energy. This Agreement is not intended by the parties to constitute an agreement the characterization of which is governed by Section 7701(e) of the Internal Revenue Code. But if contrary to the parties' intentions, it is held to be so governed, the parties intend that this Agreement be treated as a "service agreement" rather than as a "lease" as provided in Sections 7701(e)(3) and (e)(4) of the Internal Revenue Code. Neither party shall take any position on any original or amended tax return filed with any taxing authority or take any position in any administrative or judicial proceeding relating thereto that is inconsistent with the intention of the

parties that this agreement is not characterized as a lease of the equipment for income tax purposes or for any other purposes.

13.2 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

13.3 Seller is not a Utility. The Purchaser hereby acknowledges and agrees that for the purposes of this Agreement, the Seller is not a "utility" as such term is used in United States Bankruptcy Code Section 366 and agrees to waive and not to assert the applicability of the provision of United States Bankruptcy Code Section 366 in any legal or bankruptcy proceeding where the Purchaser is a debtor.

13.4 Airport Security Program.

(a) PNE Security Program.

(i) In the event that TSA or other security program at the Airport is instituted, Seller agrees that it shall comply with such security programs and, if required, shall have in place and operational a security program approved by the City for the Site, including without limitation, adequate security measures to control vehicular access to the Site, at all time during the Term. At all times during the Term, Seller's security program must comply with all applicable laws or regulations from time to time enacted or promulgated and must be consistent and compatible in all respects with the City's overall security program for the Airport and must be acceptable to the City and TSA.

(ii) Notwithstanding anything herein to the contrary, Seller shall be responsible for the security control of the perimeter gates and doors within the Site with access to the AOA (as defined below). Seller shall keep all such perimeter gates and doors locked when not in use. Seller's failure to comply with the foregoing may result in penalties in accordance with the Airport's Rules and Regulations, in addition to any other remedies available to the City under the Agreement, at law or in equity.

(b) Indemnification. Seller shall be responsible for any breach of security on the Site which occurs as a result of the negligence and/or willful misconduct of Seller, its agents, employees, contractors, subtenants, or invitees, and Seller further agrees to defend, indemnify and hold harmless the Purchaser and the City from and against any and all damages, penalties, fines, claims and costs resulting directly or indirectly from the breach of Seller's responsibilities, covenants and agreements as set forth in this Section. The Purchaser shall cause the City to provide Seller notice of and consult with Seller regarding any claims that the City has knowledge of and are related to Seller. The Purchaser shall cause the City to work collaboratively with Seller in the defense of all alleged security violations, at Seller's cost.

(c) Confidentiality and Indemnity. In connection with its operations, Seller

may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall security program for the Airport. Seller acknowledges that all such knowledge and information is of a highly confidential nature. Seller covenants and agrees that no person, whether an employee of Seller or a third party, shall be permitted or gain access to such knowledge and information, unless such person has been approved by the City in advance in writing, which approval may be granted or withheld by the City in its sole discretion. Notwithstanding the foregoing, Seller is permitted to direct such security knowledge and information to its employees who require same to conduct Seller's business or to comply with any law or regulation. Seller further agrees to defend, indemnify and hold harmless the Purchaser and the City and other users of the Airport from and against any and all fines, claims, costs, expenses, damages and liabilities, including but not limited to all attorneys' fees and costs, resulting from the breach of Seller's covenants and agreements as set forth in this Section. The Purchaser shall cause the City to provide Seller notice of any claims that the City has knowledge that relate to Seller.

(d) Material Breach. Violation of any of the provisions of this Section shall constitute a material breach of the Agreement and an Event of Default. In order to cure a breach under this Section, Seller shall cooperate with the City in all respects reasonably necessary to assist in its defense related thereto in the City's sole discretion."

(e) Definitions. As used herein, "**Air Operations Area**" or "**AOA**" means the portion of the Airport designed and used for landing, taking off or surface maneuvering of aircraft, including all aircraft movement areas, including, without limitation, runways, taxiways, and aircraft parking areas.

13.5 FAA Jurisdiction.

(a) No Exclusive Right. Nothing contained in this Agreement shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act or any other statute, ordinance, regulation, or policy of any governmental agency having jurisdiction over the Airport and/or the activities that take place at the Airport.

(b) Subordinate to United States Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or maybe required by the provisions of the Federal Aviation Act of 1958, as amended, or any future act affecting the operation or maintenance of the Airport. Any provisions inconsistent with the provision of such lease, or agreement, or assumption of control by the United States, shall be suspended.

(c) Required Changes. In the event the FAA, or the Transportation Security Administration ("**TSA**"), requires, as a condition precedent to the granting of funds for the improvement of the Airport, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Agreement, then the Seller agrees that such changes as

may be reasonably required to enable the City to obtain said funds shall be permitted.

(d) Termination for Airport Modifications. Seller acknowledges that the City shall have the absolute right to cause the Purchaser to terminate this Agreement for Airport Modifications. For purposes of the Agreement, “Airport Modifications” shall mean any modification, or improvement to or expansion of the Airport which requires modification, reconfiguration or reduction to the Site or the System as may be required or requested by FAA, TSA, the Pennsylvania Department of Transportation, the Environmental Protection Agency or any other Federal, Commonwealth or local regulatory agency having jurisdiction over the City. Purchaser shall give Seller written notice of the termination date, which shall be not less than one hundred and eighty (180) days from the date of the written notice (“Airport Modification Termination Date”). Termination of this Agreement shall not affect any obligations or liabilities of either party accruing prior to the Airport Modification Termination Date. It is understood and agreed that neither Purchaser nor the City shall be liable or in any way responsible to Seller for any termination expense, damages, anticipated profits, unabsorbed or under-absorbed overhead or unperformed services or costs, except as specifically provided herein. In such event, Purchaser shall cause the City to reimburse Seller for the unamortized Capital Costs actually incurred by Seller and approved by the City in connection with the Site. It is understood that such unamortized Capital Costs shall be amortized on a straight-line basis for the lesser of: (i) twenty (20) years; or (ii) the remaining useful life of the System.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Assignment.

(a) No Assignment Without Consent. Except as permitted in this Article 15, neither party shall assign this Agreement or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided (i) at least thirty (30) days prior notice of any such assignment shall be given to the other party; (ii) any assignee shall expressly assume the assignor’s obligations hereunder, unless otherwise agreed to by the other party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other party agrees in writing in advance to waive the assignor’s continuing obligations pursuant to this Agreement; (iii) no such assignment shall impair any security given by Seller hereunder; (iv) before the Agreement is assigned by Seller, the assignee must first obtain such approvals, if any, as may be required by all applicable Governmental Authorities and any assignment of the Agreement must be contemporaneous with an Assignment of the Site Lease as authorized under the Site Lease.

(b) Transfer to City or City Authorities. Seller’s consent shall not be required for the Purchaser to assign this Agreement to the City or a municipal authority of the City.

Collateral Assignment by Seller. Without the consent of the Purchaser Seller may, in its discretion,

make a collateral assignment of this Agreement to any and all financing parties or grant any or all financing parties a lien or security interest in any right, title or interest in part or all of the System or any or all of Seller's rights under this Agreement for the purpose of the financing or refinancing of the System; provided, however, that Seller shall provide notice of each such assignment (including the identity of the assignee) no less than thirty (30) days prior to assignment and such assignment shall recognize the Purchaser's rights under this Agreement. In order to facilitate the obtaining of financing or refinancing of the System, the Purchaser shall cooperate with Seller and execute consents, agreements or similar documents with respect to a collateral assignment hereof (“**Lender Required Consents**”) to any financing party as such financing party may reasonably request in connection with the financing or refinancing of the System, including an agreement to give notice to such financing parties of any default by Seller under this Agreement and to allow such financing parties to cure any such default during periods which are equal to and consistent with the cure periods Seller has under this Agreement, provided that the Purchaser shall be reasonably satisfied that any such consents, agreements or similar documents do not in any manner adversely affect its rights under this Agreement or impose material obligations on the Purchaser except with respect to providing any additional notice of default and opportunity to cure consistent with this Agreement. Seller shall reimburse the Purchaser for the expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by the Purchaser in the preparation, negotiation, execution and/or delivery of any documents requested by Seller, and provided by the Purchaser, pursuant to this Section 15.1(c).

(c) Seller Change of Control. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of law) shall require the prior written consent of the Purchaser, which shall not be unreasonably withheld. “Change of Control” shall mean a change in either (1) fifty percent or more of the economic interests in Seller or (2) the ability to vote fifty percent or more of the controlling interests in Seller; provided that a Change of Control shall not occur with respect to any change in interests in a publicly traded company.

(d) Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of any interest in the System or in this Agreement made without fulfilling the requirements of the Agreement shall be null and void and shall constitute an Event of Default.

14.2 Notices.

(a) Unless otherwise provided herein, any notice, consent or waiver required or permitted hereunder must be in writing under this Agreement and mailed by certified mail, postage prepaid, returned receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile to the following addresses:

If to the Purchaser:

Philadelphia Energy Authority
City Hall, Room 566
1400 JFK Boulevard
Philadelphia, PA 19107
Attn: President
Phone: (215) 686-4483
Fax:

If to the Seller:

Solaer USA PNE LLC
7676 Hillmont Street, Suite 290G
Houston, TX 77040
Attn: Vance Nobe, President
Phone: 713-878-1250
Fax: 713-391-8395

(b) Any notice shall be deemed to have been delivered to a party upon such party's receipt or refusal to accept.

14.3 Binding Effect. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

14.4 Waivers. No failure or delay by either party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No consent by either party to, or waiver of a breach by either party, whether express or implied, may be construed to operate as or constitute a consent to waiver of, or excuse of, any other or subsequent or succeeding breach by either party.

14.5 Amendment. No modification of this Agreement will be effective except by written amendment executed by the parties.

14.6 Counterparts. This Agreement may be executed in counterparts, which will together constitute one and the same agreement.

14.7 Entire Agreement. This Agreement and the Site Lease shall constitute the entire agreement between the parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the parties concerning such subject matter.

14.8 Third-Party Beneficiaries.

(a) The Parties acknowledge that the City is an intended third-party beneficiary of the Agreement; provided, however, that the City shall have no rights or remedies available to it to a greater extent than those available to Purchaser under this Agreement, and any exercise of such rights and remedies is subject to all limitations applicable to Purchaser as set forth in this Agreement. Notwithstanding the foregoing, nothing else in this Agreement shall provide any benefit to any Person, other than the Parties and the City, or entitle any third Person to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

(b) The City's status as a third-party beneficiary, does not confer on Seller any rights under this Agreement against the City. Specifically, while the Agreement sets forth certain actions expected to be performed by the City, and failure to take such actions may constitute a default under the Agreement, Seller's sole recourse for any failure by the City is against PEA, which is responsible hereunder for the complete performance of (or compliance with, as applicable) any terms and conditions which it is required to cause the City to perform or comply with hereunder.

14.9 Severability. If any provision of this Agreement is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

14.10 Governing Law; Venue. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of law. Any suit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Agreement, or the relationship created or evidenced thereby shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two forums on grounds of venue or forum non-convenience, and the Parties expressly consent to the jurisdiction and venue of these two forums. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

14.11 Relationship of the Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any party be an agent, representative, trustee or fiduciary of any other party. Neither Seller nor Purchaser shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each party as an independent contractor. Neither the Seller nor its employees or subcontractors shall in any way represent that they are acting as employees, officials or agents of the Purchaser or the City.

14.12 Counterparts. This Agreement may be executed in one or more identical counterparts, each of which will be deemed an original, and all of which, together, will comprise a single agreement.

14.13 Electronic Signatures. The parties acknowledge and agree that notwithstanding any law or presumption to the contrary, a telefaxed, electronic signature or signature that is transmitted electronically of either party whether upon this Agreement or any related document shall be deemed valid and binding and admissible by either party against the other as if same were an original ink signature.

Signatures

As evidence of their intent to be legally bound, the parties have signed this Agreement as of the Effective Date.

SOLAER USA PNE LLC

By: _____

Name: Vance Nobe

Title: President

PHILADELPHIA ENERGY AUTHORITY

By: _____

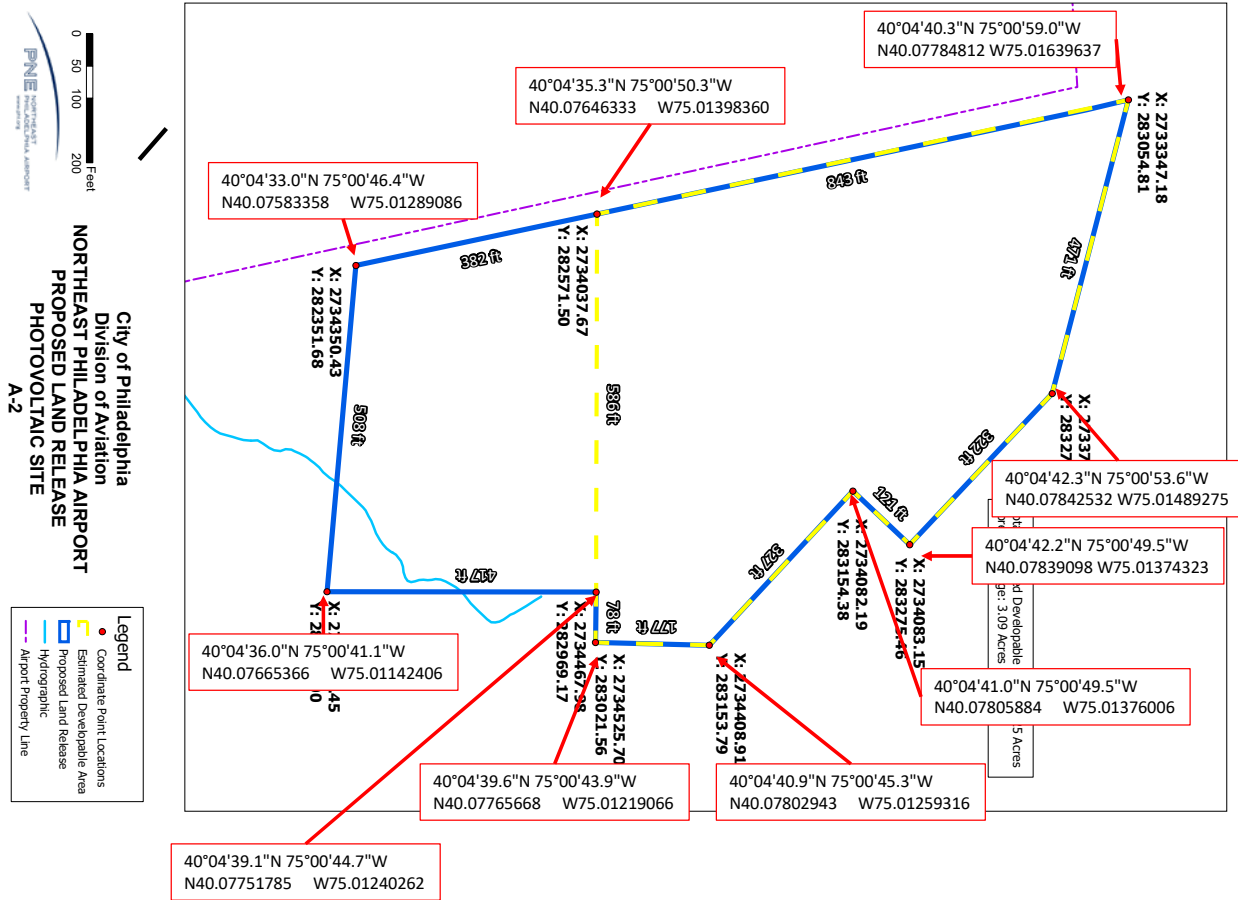
Name: Emily Schapira

Title: President and CEO

EXHIBIT A DESCRIPTION OF THE SITE AND THE AIRPORT INTERCONNECTION

Site Description

The approximate coordinates of the site location are shown below:



The airport interconnection will be at the switchgear building.

EXHIBIT B DESCRIPTION OF THE SYSTEM

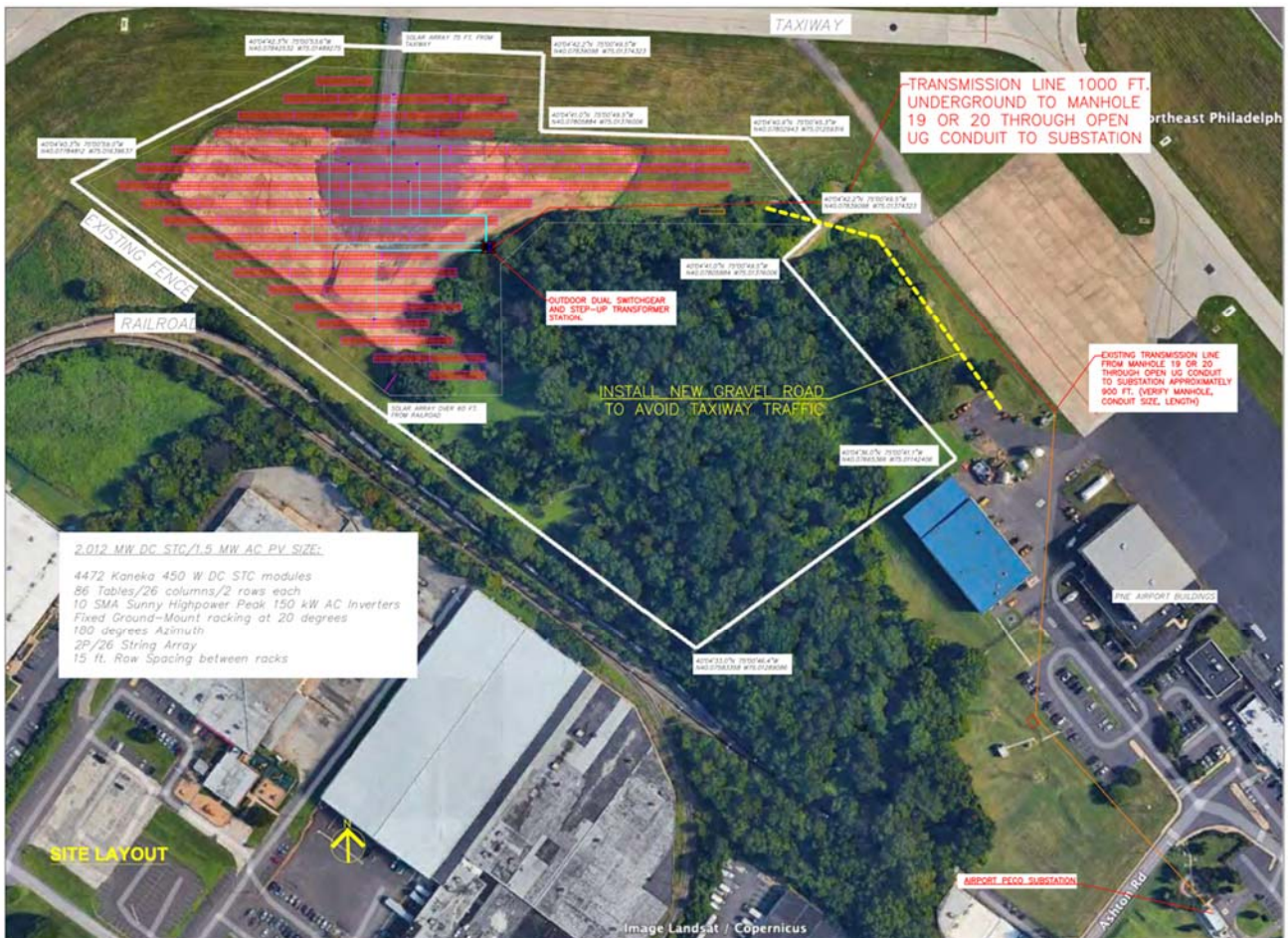
Solar Power System Description

A ground-mounted solar photovoltaic power system with the following approximate nameplate rating:

2.012 MW DC STC (mega-watt direct current standard test conditions)

1.5 MW AC (alternating current)

The preliminary solar power system layout and design is as follows:



This preliminary layout and design may change subsequent to reviews performed by PECO and/or City of Philadelphia.

EXHIBIT C
FORM OF SELLER GUARANTEE

THIS GUARANTEE is made as of [Date] by **Solaer USA, LLC**, a Texas limited liability company ("**Parent**") to and for the benefit of the Philadelphia Energy Authority (the "**Purchaser**"), and the City of Philadelphia (the "**City**").

Background

A. Solaer USA PNE, LLC, a Pennsylvania limited liability company ("**Seller**") and a wholly owned subsidiary of Parent, and the Purchaser have entered into a Power Purchase Agreement dated [date] (the "**Agreement**") and the City is a beneficiary of the Agreement.

B. Parent is willing to guarantee, as set forth below, the performance of the Seller under the Agreement.

C. The Purchaser would not enter into the Agreement unless Parent provided this Guarantee.

D. Any term used herein defined in the Agreement shall have the meaning attributed to it in the Agreement.

NOW, THEREFORE, as an inducement to the Purchaser to enter into the Agreement, Parent agrees as follows:

1. Parent hereby unconditionally, irrevocably and absolutely guarantees to the Purchaser the performance by the Seller, and by any successor assign of the Seller, including any Affiliate, of all the Seller's obligations under the Agreement in accordance with the terms and conditions contained therein, and each and every other obligation or liability (both those now in existence and those that shall hereafter arise, including, without limitation, all reasonable costs and expenses of enforcement, including reasonable attorneys' fees) of Seller to the Purchaser arising pursuant to the Agreement, whether or not Seller shall hereafter be released or discharged from such obligations or liabilities (collectively, the "Obligations").

2. Under this Guarantee, Parent shall perform (or cause the Seller to perform) all Obligations in accordance with the terms and conditions of the Agreement.

3. Parent agrees that this Guarantee is an unconditional and continuing guaranty and will remain in full force and effect until all Obligations under the Agreement have been performed as set forth in the Agreement.

4. Parent waives protest and notice of dishonor or default. This is a guaranty of performance only, and not of collection.

5. Parent agrees that its Obligations under this Guarantee shall not be terminated,

reduced, or affected in any way by reason of the assertion by Purchaser against Seller of any right or remedy for the enforcement of the Obligations of Seller under the Agreement, or by reason of the waiver by Purchaser of, or its failure to enforce, any of the terms, covenants, or conditions of the Agreement, or the granting of any indulgence or extension of time to the Seller; and Parent waives notice of any of the foregoing and of default by the Seller in the performance of the Obligations. Parent further agrees that its Obligations hereunder shall apply with full force and effect to any amendment, renewal, or extension of the Agreement, even though made without notice thereof to Parent.

6. The respective Obligations of Parent to the Purchaser set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that the Purchaser first enforce any remedies it may have against the Seller or any other person, or any requirement to seek to recover from Seller hereunder before proceeding against Parent hereunder, and shall not be subject to any claim of Parent against any other person including the Purchaser, other than a claim that the matter giving rise to the Purchaser claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State.

7. Parent agrees that its liability under this Guarantee shall be primary, direct and immediate, and that with respect to any right of action which shall accrue to the Purchaser under the Agreement, Purchaser may at its option proceed against Parent without having commenced any action or having obtained any judgment against the Seller.

8. Parent waives any and all defenses available to it in connection with the enforcement of the Guarantee, including, but not limited to, the right to require pursuit of any remedies against the Seller or any other person.

9. This Guarantee shall remain in full force and effect notwithstanding the institution by or against the Seller of any bankruptcy, reorganization, readjustment, receivership, insolvency or similar proceedings of any nature whatsoever, or the disaffirmance of the Agreement, in connection therewith.

10. Parent agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in enforcing this Guarantee against Parent.

11. No failure or delay by the Purchaser in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided in the Agreement or by law or equity. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

12. Parent may not assign its Obligations hereunder, except to a successor by merger or consolidation or any transferee of all or substantially all of the properties of Parent.

13. Parent represents that as of the date hereof:

(a) Parent is a limited liability company duly organized and existing in good standing under the laws of Texas and has the corporate power and authority to enter into and perform its Obligations under this Guarantee.

(b) Parent has the power, authority, and legal right to enter into and perform this guarantee and the execution, delivery and performance hereof (i) have been duly authorized, (ii) have the requisite approval of all governmental bodies, (iii) will not violate any judgment, order, law or regulation applicable to Parent or any provisions of Parent's Articles of Organization or operating agreement, and (iv) do not (A) conflict with, (B) constitute a default under or (C) result in the creation of any lien, charge, encumbrance or security interest upon any assets of Parent under any agreement or instrument to which Parent is a party or by which Parent or its assets may be bound or affected.

(c) There are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect Parent's ability to perform its Obligations under this Guarantee.

14. This Guarantee shall be governed by the laws of the Commonwealth of Pennsylvania (the "State") and Parent hereby agrees to the service of process in the State for any claim or controversy arising out of this guarantee or relating to any breach and to submit to the exclusive jurisdiction of any court of competent jurisdiction of the Philadelphia County Court of Common Pleas over any suit, action or proceeding arising out of or relating to this Guaranty.

15. This Guarantee will be binding upon and enforceable against Parent, its successors, assigns, and legal representatives, and is for the benefit of the Purchaser, the City and their respective successors and assigns.

IN WITNESS WHEREOF, Parent has executed this instrument the day and year first above written

SOLAER USA LLC

By: _____

Title: President

EXHIBIT D
FORM OF CITY SOLAR POWER PURCHASE AGREEMENT

EXHIBIT E
FORM OF NOTICE TO PROCEED

This Notice to Proceed is issued effective as of [Date] pursuant to that certain Solar Power Purchase Agreement dated [Date] (the **Agreement**) between Solaer USA PNE LLC (**Seller**) and the Philadelphia Energy Authority (**Purchaser**).

1. Seller and Purchaser each acknowledge that the conditions precedent to their respective obligations set forth in Article 2 of the Agreement have been satisfied or that they hereby waive any conditions not so satisfied [; provided (*Insert any further conditions agreed to as a condition of a party's waiver*)].

2. The Purchaser hereby directs the Seller to begin the installation of the System in accordance with the terms of the Agreement.

Seller

Solaer USA PNE LLC

Purchaser

Philadelphia Energy Authority

By: _____

Title: President

By: _____

Title:

EXHIBIT F
CITY CONTRACTOR CONDUCT POLICY

EXHIBIT G

PERFORMANCE TESTS

**EXHIBIT H
PURCHASE PRICES**

Operating Year	Energy Purchase Price per MWh	SREC Purchase Price
1	\$66.00	-
2	\$67.65	-
3	\$69.34	-
4	\$71.07	-
5	\$72.85	-
6	\$74.67	-
7	\$76.54	-
8	\$78.45	-
9	\$80.41	-
10	\$82.42	-
11	\$84.49	-
12	\$86.60	-
13	\$88.76	-
14	\$90.98	-
15	\$93.26	-
16	\$95.59	-
17	\$97.98	-
18	\$100.43	-
19	\$102.94	-
20	\$105.51	-
21	\$108.15	-
22	\$110.85	-
23	\$113.62	-
24	\$116.46	-
25	\$119.38	-

EXHIBIT I
ESTIMATED ANNUAL PRODUCTION AND PRODUCTION GUARANTEE

				$f = (b - c) \pm d$		$h = f \times g$		$j = \min(0, h - i)$
Operating Year	Estimated Annual Production (MWh)	Force Majeure Deductions (MWh)	Insolation/ Weather Adjustment (MWh)¹	Adjusted Annual Production (MWh)	Production Guarantee	Annual Delivery Guarantee (MWh)	Actual Annual Production (MWh)	Annual Shortfall (MWh)
Year 1	3,453				80%			
Year 2	3,436				80%			
Year 3	3,418				80%			
Year 4	3,401				80%			
Year 5	3,384				80%			
Year 6	3,367				80%			
Year 7	3,351				80%			
Year 8	3,334				80%			
Year 9	3,317				80%			
Year 10	3,301				80%			
Year 11	3,284				80%			
Year 12	3,268				80%			
Year 13	3,251				80%			
Year 14	3,235				80%			
Year 15	3,219				80%			
Year 16	3,203				80%			
Year 17	3,187				80%			
Year 18	3,171				80%			
Year 19	3,155				80%			
Year 20	3,139				80%			
Year 21	3,124				80%			
Year 22	3,108				80%			
Year 23	3,092				80%			
Year 24	3,077				80%			
Year 25	3,062				80%			

¹ Seller to provide Insolation/Weather Adjustment calculation for Buyer's review

EXHIBIT J**EARLY TERMINATION FEE**

Operations Year	Early Termination Amount
1	\$3,500,000
2	\$3,360,000
3	\$3,220,000
4	\$3,080,000
5	\$2,940,000
6	\$2,800,000
7	\$2,660,000
8	\$2,520,000
9	\$2,380,000
10	\$2,240,000
11	\$2,100,000
12	\$1,960,000
13	\$1,820,000
14	\$1,680,000
15	\$1,540,000
16	\$1,400,000
17	\$1,260,000
18	\$1,120,000
19	\$980,000
20	\$840,000
21	\$700,000
22	\$560,000
23	\$420,000
24	\$280,000
25	\$140,000

EXHIBIT K
SELLER'S INSURANCE

Insurance. Unless otherwise approved by the City's Risk Management Division in writing, the successful respondent (hereinafter "Provider") shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the Purchaser and the City in the event coverage is materially changed, cancelled, or non-renewed. The Purchaser and the City, their officers, employees, and agents, shall be named as additional insureds on the General Liability and Umbrella Liability Insurance policies. Provider shall also deliver or cause to be delivered to the Purchaser and the City an endorsement stating that the coverage afforded the Purchaser and the City and their officers, employees, and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the Purchaser or City, its officers, employees or agents shall invalidate the coverage.

- (a) Workers' Compensation and Employers' Liability.
 - (1) Workers' Compensation: Statutory Limits
 - (2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
 - (3) Other states' insurance including Pennsylvania.
- (b) General Liability Insurance.
 - (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.
 - (2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including

completed operations).

(c) Automobile Liability Insurance.

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Such requirement shall be \$5,000,000 per occurrence for vehicles with access to the airfield.
- (3) Coverage: Owned, non-owned, and hired vehicles.

(d) Umbrella Liability Insurance.

- (1) Limit of Liability totaling \$5,000,000 per occurrence when combined with insurance required under (a), (b) and (c) above for the period of construction and installation of the PV system.
- (2) Limit of Liability totaling \$3,000,000 per occurrence when combined with insurance required under (a), (b), and (c) above after the system Commercial Operation Date.

(e) Professional Liability Insurance.

- (1) Limit of Liability: \$2,000,000 with a deductible not to exceed \$100,000.
- (2) Coverage: Errors and omissions.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Contract shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the Services.

(f) All Risk Property Insurance.

- (1) Subcontractor is responsible for any damage to their work, materials,

equipment, tools, etc. It is the responsibility of the Subcontractor to insure at Subcontractor's sole expense. In the event that a crane will be required to be supplied by Subcontractor on this project, Subcontractor shall maintain Contractor's Equipment Coverage in connection with that crane including insurance coverage for expenses to re-erect the crane and Rental Reimbursement and Expediting Expense Coverages.

- (2) In addition, the Subcontractor waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against City of Philadelphia, Division of Aviation and [General Contractor, Construction Manager, Prime Contractor, Owner, all the Additional Insureds] and any of their agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the work or any other type of property insurance (such as Contractor's Equipment, Installation Floater) maintained by Subcontractor

Self-Insurance. Provider may not self-insure any of the coverages required under the Contract without the prior written approval of the Responsible Official and the City's Risk Manager. In the event that Provider wants to self-insure any of the coverages listed above, it shall submit to the Responsible Official Purchaser and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Material hereunder, a certified copy of Provider's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Purchaser or the City's Risk Manager. In the event the City grants such approval, Provider understands and agrees that the Purchaser and the City, their officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of the Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in the Contract by Provider to the Purchaser and the City, or to limit Provider's liability under the Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverages must specifically reference the Agreement for which they are being submitted. The original certificate of insurance must be submitted to the City's Risk Manager at the following address:

City of Philadelphia
Finance Department

Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579

(Fax No.: 215-683-1718).

EXHIBIT L

CITY STANDARD PROVISIONS

Defined Terms

Capitalized terms used in this Exhibit and not defined herein shall have the meanings ascribed to them in the Agreement. Reference in this Exhibit to the “City” shall mean the City of Philadelphia, in its municipal capacity.

Prohibited Gifts

(a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is conveyed in return, from any person who, at time or within twelve (12) months preceding the time a gift is received:

1. is seeking, or has sought, official action from the officer or employee;
2. has operations or activities regulated by the officer’s or employee’s agency, department, office, board or commission, or, in the case of gifts to members of the Mayor’s Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch; or
3. has a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee is able to substantially affect by his or her official action.

(b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including any attorney at law while engaged in lobbying.

(c) Seller understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Seller shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation. Furthermore, if Seller offers or gives, directly or indirectly, anything of value to any City official or employee in violation of Executive Order 10-16, it will constitute a default by Seller and entitle the City to exercise any rights or remedies available to it under the Agreement, at law and in equity.

(d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 have been instructed to report these actions to the appropriate authorities. If Seller is solicited for gifts or gratuities by City employees, Seller is urged to report these incidents to the appropriate authorities, including but not limited to, the City’s Office of the Inspector General.

Executive Order 7-14: Office of the Inspector General and Duties of Those Involved in Transactions with the City

Seller shall:

1. report to the City’s Office of Inspector General (the “OIG”) knowledge of violations subject to investigation by the OIG pursuant to Philadelphia Mayoral Executive Order 7-14;
2. cooperate fully with representatives of the OIG by providing complete and accurate information as well as the necessary assistance in matters under investigation;
3. keep conversations and contact with the OIG confidential, except and to the extent the OIG may authorize disclosure; and
4. instruct its employees that under no circumstances shall any employee or official take or threaten to take any action of any sort in an attempt to prevent anyone from providing to a City official information regarding conduct that is the subject of Section 3 of Executive Order 7-14, or providing any information to, or cooperating with, the OIG, or retaliate against anyone for doing so or against anyone who is about to do so.

Certification of Non-Indebtedness

(a) Seller hereby certifies and represents to the City that Seller and Seller’s direct organizational affiliate(s) and/or subsidiaries, if any, are not currently indebted to the City, and will not during the Term of the Agreement and any extension or renewal thereof be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the Purchaser or the City at law or in equity, Seller acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Seller in connection with the Agreement and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Seller and/or the termination of the Agreement for default (in which case Seller will be liable for all excess costs and other damages resulting from the termination).

(b) Seller shall require all contractors and subcontractors performing repairs and/or alterations on the Site or in connection with the Agreement to sign a certification of non-indebtedness in favor of the City, which certification shall include the following provisions and Seller shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

“_____ (“Subcontractor”) hereby certifies and represents that Subcontractor and Subcontractor’s parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (“City”), and will not at any time during the term of Seller’s lease with the City dated _____,

20_ (“Agreement”), be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written payment plan satisfactory to the City has been established. In addition to any other rights or remedies available at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of the Agreement for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).”

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by Seller and entitle the City to exercise any rights or remedies available to it under the Agreement, and at law and in equity.

Fair Practices

Seller agrees to comply with the provisions of the Fair Practices Ordinance, Chapter 9-1100 of The Philadelphia Code (as it may be amended from time to time, the “Code”), which prohibits, inter alia, denial of or interference with the employment opportunities of an individual based upon the individual’s race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or domestic or sexual violence victim status.

Application of Prevailing Wage Rates and Rules to Project Work

The contract will require that employees of contractors and their subcontractors performing project building or construction work, including repair, alteration and remodeling, and all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air-conditioning systems produced as non-standard items for such work be paid at least the applicable prevailing wages for the respective occupational classifications designated in Section 17-107 of the Philadelphia Code, Contractors: Labor-Management Relationships.. All requirements of Sections 17-107(2),(3),(4),(5),(6),(7),(8) and (9) shall be deemed applicable pursuant to the contract to the contractors and their subcontractors. Contractors and their subcontractors are required to submit weekly certified payroll records to the City’s Labor Standards Unit (“LSU”) through an electronic system, LCP Tracker, or as directed by the Labor Standards Unit. Failure to pay prevailing wage, as applicable, or to submit certified payroll records is a substantial breach of the contract and may be subject to fines and penalties as prescribed by Sections 17-107(8) and (9) of The Philadelphia Code. Those provisions may include withholding from any sums due to the Contractor under the Contract so much as may be necessary to pay the employees the difference between the wages required to be paid hereunder and the wages actually paid to such employees, and the City may make such payments directly to the appropriate employees.

The prevailing wage rate schedule is provided in Exhibit N.

No Alcohol Advertisements

Seller shall not place (or permit placement) on the Site any advertisements for alcohol.

Nondiscrimination

(a) In accordance with Chapter 17-400 of the Code, Seller agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement or otherwise available at law or in equity.

(b) Seller agrees to include subparagraph (a) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to the Agreement.

(c) Seller further agrees to cooperate with the Commission on Human Relations (the "Commission") in any manner which said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code, and failure to do so constitutes a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement or otherwise available at law or in equity.

(d) Seller covenants and agrees that in order to confirm the assurance required by the City by Federal non-discrimination laws, statutes and regulations, including, but not limited to, Title VI of the Civil Rights Act of 1964 and 49 C.F.R. Part 21 of the regulations governing the U.S. Department of Transportation ("DOT"), as amended, (a) no person on the grounds of race, religion, color, national origin, sex, age or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any space leased to it hereunder and (b) Seller shall use the Site in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21 and Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. Noncompliance with this clause will constitute a material breach of the Agreement; therefore, in the event of such noncompliance, Seller hereby authorizes the City to take such action as the Federal government may direct to enforce this covenant, and Seller also authorizes the Federal government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(e) To the extent required by law, Seller will undertake any affirmative action program required by 14 C.F.R. Part 152, Subpart E, as amended from time to time to ensure that no person is excluded from participating in any employment, contracting, or leasing activity on the grounds of race, religion, color, national origin or sex. Seller agrees that no person may be excluded on these grounds from participating in or receiving the services or benefits of any program or activity

covered by the regulation. Seller will require its covered sub-organizations to provide assurance that they will also undertake affirmative action programs and require assurance from their sub-organizations, as required by 14 C.F.R. Part 152.

A. If Seller, any sub-tenant, or any subcontractor is an Employer subject to the requirements of Chapter 17-1300, as that term is defined in Section 17-1302 and described in Section 17-1303 of the Code, then, absent a waiver, during the term of the Agreement and any extension thereto, in addition to any applicable Commonwealth and Federal requirements, it shall provide its respective covered Employees with at least the minimum wage standard and minimum benefits standard and notice thereof, as required under applicable law. A summary of the current requirement is as follows:

1. Term of Agreement and Effective Date of Minimum Wage Rates.

(a) For agreements with a term of one year or less, the rate applicable on the effective date of the agreement is the rate for the entire term of the agreement.

(b) For renewals and amendments with a term of one year or less, the rate applicable on the effective date of the renewal or amendment is the rate for work performed during the term of the renewal or amendment and remains the rate throughout the term of the renewal or amendment.

(c) For leases, renewals, and amendments with a term longer than one year, the applicable rate on the effective date of the agreement shall apply until the next June 30. On the next July 1, the new rate effective on that July 1 date shall apply during the period from July 1 through the following June 30. Each July 1, the rate may increase.

2. Minimum Wage Rates. Absent a waiver, an Employer subject to Chapter 17-1300 shall pay each Employee an hourly wage, excluding benefits, equal to:

Effective Date between July 1, 2020, and June 30, 2021, \$13.75;

Effective Date between July 1, 2021, and June 30, 2022, \$14.25;

Effective Date between July 1, 2022, and June 30, 2023, \$15.00; and

Starting July 1, 2023, and thereafter, \$15.00 multiplied by the CPI Multiplier, provided that the minimum wage shall not be less than the previous year's minimum wage. The CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers (CPI-U) of each calendar year. The then-current minimum hourly wage applicable will be posted on the City's website.

3. Minimum Benefits. Absent a waiver, if Employer is subject to Chapter 17-1300, to the extent the employer provides health benefits to any of its employees, the Employer shall provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer. The Employer shall also provide to each covered Employee at least the minimum number of earned sick leave days required by Section 17-1305(2) of the Code.

B. Absent a waiver, if Seller is subject to Chapter 17-1300, Seller shall promptly provide to the City all documents and information as the City may require verifying its compliance and that of all sub-tenants and subcontractors who are also Employers with the requirements of Chapter 17-1300. Each covered Employer shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

C. Absent a waiver, if Seller is subject to Chapter 17-1300, Seller shall take such steps as are necessary to notify its covered sub-tenants and subcontractors of the requirements of this section and to cause such covered sub-tenants and subcontractors to notify lower-tier covered sub-tenants and subcontractors of these requirements, including, without limitation, by incorporating this section, with appropriate adjustments for the identity of the parties, in its sub-leases and subcontracts with such covered sub-tenants and subcontractors, respectively. A Seller, sub-tenant, or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and a hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or the Agreement.

D. The failure of a Seller, sub-tenant, or subcontractor at any tier subject to Chapter 17-1300 to comply with these provisions shall constitute a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement or otherwise available at law or in equity.

E. Seller's covered Employees shall be deemed third-party beneficiaries of Seller's representation, warranty, and covenant to the City under this section only, and the covered Employees of a sub-tenant or subcontractor at any tier that is also a covered Employer shall be deemed third-party beneficiaries of their Employer's representation, warranty, and covenant to Seller or such sub-tenant or subcontractor at any tier, as the case may be, under this section.

F. The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code.

EXHIBIT M
CONTRACT COMMITMENTS

EXHIBIT N
PREVAILING WAGE SCHEDULE

Prevailing Wages

- a. All employees performing project building or construction work, including repair, alteration and remodeling, and all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air-conditioning systems produced as non-standard items for such work under the Agreement shall be paid at least the applicable prevailing wages for the respective occupational classifications designated, as set forth in the minimum wage schedule attached as Exhibit N, and shall be given at least the applicable presently prevailing working conditions during the entire period of work under the Agreement. Such working conditions are those which are given to employees pursuant to a bona fide collective bargaining agreement for the applicable craft, trade or industry in the Philadelphia area on the date the Agreement is entered into. The occupational classifications for all employees under the Agreement shall be only the specific categories of jobs within a given craft, trade or industry for which a separate hourly wage rate for the Philadelphia area is determined by the Secretary of Labor of the United States, in accordance with the provisions of the Davis-Bacon Act, and which are set forth in the applicable schedule attached as Exhibit N. In the event that the Seller believes that work under the Agreement should be performed by employees in occupational classifications omitted from the schedule attached as Exhibit N, it shall so advise the Managing Director's Office (the "MDO"), Labor Standards Division, which shall remedy the omission if it agrees.
- b. The Purchaser may withhold from any sums due to the Seller under the Agreement so much as may be necessary to pay the employees the difference between the wages required to be paid under this section and the wages actually paid to such employees, and the Purchaser or the City may make such payments directly to the appropriate employees.
- c. The Seller shall require all contractors to comply with and be bound by all of the provisions of this section and of Section 17-107 of The Philadelphia Code, and the Seller shall insert the requirements of Section 17-107 in all subcontracts.
- d. The Seller, and the Seller's contractors and subcontractors, shall keep an accurate record preserved on employee time sheets or time cards showing the name, address, social security number, occupational classification, wages and other benefits paid or provided and number of hours worked for each employee assigned to city-work (as "city work" is defined in Section 17-107(1)(b) of The Philadelphia Code), and such record shall be preserved at the current place of business of the employer for two (2) years from the date of creation. The Seller shall maintain and make his or her accounting and employment records and records relating thereto available for inspection by authorized representatives of the City, at all reasonable hours, and shall permit such representatives to interview employees during the hours on the job, all without prior notice. Neither the Seller nor any contractor shall allow any employee or other person to interfere with any such inspection or interview.

- e. The Seller and all contractors and subcontractors performing work shall, upon request of the City, file with the MDO, Labor Standards Division a certified statement setting forth the name, address, occupational classification, wages and other benefits paid or provided and number of hours worked with respect to each employee performing work. Such statement shall be made weekly for each preceding weekly period. The certification shall affirm that the statement is correct and complete, that the wages set forth therein are not less than those required by the Agreement for work and that the occupational classification set forth for each employee conforms with the work performed.
- f. Nothing herein shall preclude the payment by the Seller of wages at rates higher than those specified as the minimum in the applicable Exhibit N. However, no increase in any Purchase Price shall be allowed or authorized on account of the payment of wages in excess of those specified, or on account of wage increases granted hereafter.
- g. The minimum wages required hereby shall be paid unconditionally without any subsequent deduction or rebate of any kind except in accordance with Applicable Law governing payroll deductions for taxes, benefits and collective bargaining charges. Any assignment of wages by an employee for the direct or indirect benefit of the Seller shall constitute a violation of this paragraph; and any purported release of rights under Section 17-107 of The Philadelphia Code by an employee shall be void and of no effect.
- h. The parties shall refer to Section 17-107 of The Philadelphia Code, and to the regulations to be issued from time to time by the MDO, Labor Standards Division, for further information concerning the administration of the foregoing requirements. In addition, it shall be the responsibility of the Seller and its contractors to inform themselves as to all prevailing working conditions, including, without limitation, length of work day and work week, overtime compensation, and holiday and vacation rights.

EXHIBIT O

PRECONSTRUCTION CONTINGENCIES

If prior to the Scheduled Commercial Operation Date any of the following events occur (each a “Preconstruction Contingency”):

- 1.** any of the technical changes are required by either PECO or the City of Philadelphia’s permitting department that affect:
 - a.** Background, Section A, System size.
 - b.** Background, Section D, Site size.
 - c.** Article 8.3, guaranteed production 80%.
 - d.** Exhibit A
 - e.** Exhibit B
 - f.** Exhibit I; or

- 2.** increases in world commodity prices or the imposition or consideration of import restrictions by an agency of the United States government affecting components of the System; then

this Solar Power Purchase Agreement may be modified as provided in Section 2.3(b).