



July 1, 2013

In the Matter of the Petition of
Public Service Electric and Gas Company
for Approval of a Solar Loan III Program and
an Associated Cost Recovery Mechanism and
for Changes in the Tariff for Electric Service,
B.P.U.N.J. No. 15 Electric Pursuant to
N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1
BPU Docket No. EO12080726

In the Matter of the Petition of
Public Service Electric and Gas Company
for Approval of an Extension of a
Solar Generation Investment Program
and Associated Cost Recovery Mechanism
and for Changes in the Tariff for Electric Service,
B.P.U.N.J. No. 15 Electric Pursuant to
N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1
("Solar4All Extension Petition")
BPU Docket No. EO12080721

VIA ELECTRONIC & OVERNIGHT MAIL

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Pursuant to the terms of the Orders dated May 31, 2013 in the above-referenced proceedings, enclosed please find (1) PSE&G Solar Loan III, Project Award Selection Policy and Procedures Manual, Version 1.0; and (2) PSE&G Solar 4 All Extension, Project Award Selection Policy and Procedures Manual, Version 1.0.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Matthew Weissman".

C Attached Service List

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PSE&G Solar Loan III

**Project Award Selection Policy and
Procedures Manual**

Version 1.0

July 1, 2013

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Residential; Residential Aggregator; Small Non-Residential; and Large Non-Residential Segments

1. Objective

The objective of the Solar Loan III program is to provide a long term, stable and reliable source of financing for customers who wish to install solar systems. Awards are made through a competitive solicitation process in order to ensure that only the most cost effective projects in each segment receive loans.

2. Eligibility Requirements

- A. All solar projects must be installed within PSE&G's electric service territory.
- B. Net-metered projects must be installed at a customer location that receives (or that will receive in the case of new construction) retail electricity service from PSE&G.
- C. The solar photovoltaic panels must have a minimum 20-year output warranty.
- D. Projects accepted under this program will be ineligible for any benefits from other PSE&G or BPU renewable energy programs, except for net metering and the SRECs generated by the solar system.
- E. Projects under construction may not apply for loans in the Residential-Individual Customer, Small Non-Res, and Large Non-Res segments. "Under construction" means anything other than site clearance or site preparation. The receipt and storage of equipment at the facility site will not be considered "under construction", provided no attempt is made to assemble or erect the equipment. In the Res-Aggregated market segment, projects under construction but not in commercial operation are eligible to apply for the Solar Loan III Program. "Commercial Operation" means that the system is operating and has received its final inspection in preparation for the issuance of SRECs.
- F. For non-residential projects, loan applicants must be registered to do business in New Jersey.
- G. The applicant must meet minimum insurance requirements as specified in the Solar Loan Agreement.
- H. The applicant must make provision for solar system maintenance for the duration of the loan term.
- I. All systems that are eligible for SRECs will be eligible to participate.

3. Competitive Solicitation Process

- A. Loan applications will be grouped into market segments as defined below for review:
 - i. Residential-Individual Customer – net-metered

- ii. Residential-Aggregated by a 3rd Party – net-metered (“Res-Aggregated”)
 - iii. Non-residential ≤ 150kW – net-metered (“Small Non-Res”)
 - iv. Non-residential >150kW (up to 2 MW per project) – net-metered (“Large Non-Res”)
- B. Applicants must submit a complete application package including the credit application and appropriate loan application fee to participate in the solicitation process.
- C. PSE&G plans to conduct solicitations every other month or six times a year. However, PSE&G reserves the right to alter the schedule based on market conditions, administrative workload, and other factors.
- D. PSE&G will hire an independent Solicitation Manager ("SM") selected through a competitive bid process who will review and rank the bids received and provide guidance to the Company regarding competitive SREC Floor prices and the competitiveness of individual segments based on such factors as the number of bidders, a statistical analysis of bids to identify and reject outliers, kW bid and range of pricing.
- E. The following is a typical solicitation schedule; however, PSE&G may modify the schedule based on market conditions, administrative workload, and other factors:

EVENT	DATE
Solicitation "X" Opens	Day 1
SM Provides SREC Floor Price Benchmark	By Day 5
Deadline for Participants to Submit Offers	Day 5
PSE&G Preliminary Offer Review, Receive App. Fee, & Remedy Minor Deficiencies	Day 6-15
PSE&G Ranks Qualified Offers first by Bid Price & then by Date/Time Received	Day 16
SM Reviews Bids & Provides Recommendations to PSE&G	Day 17-19
PSE&G Notifies Applicants of Status (via email)	Day 20
PSE&G Commences Secondary Project Credit & Interconnection Review and Landfill Technical Review as appropriate	Day 21
Solicitation "X" Closes - Pending Applicants are Notified (via email)	Day 40
PSE&G Posts Solicitation Results on website	Day 41
Solicitation "X+1" Opens	Abt. Day 45

Note: All dates are business days, e.g. Day 5 is the fifth business day after the solicitation began.

- F. The actual solicitation schedule will be published on the PSE&G website.
- G. Any applicant whose project and credit application is not complete and whose application fee has not been received by Day 15 will not be considered for the pending solicitation.

- H. PSE&G will conduct a periodic, competitive solicitation process through which a potential borrower will submit a loan application with a proposed SREC floor price specific to their project.
- I. Proposed SREC floor prices must be in multiples of \$5.00
- J. Within each segment, qualified projects will be ranked from the lowest to the highest SREC floor price.
- K. Applicants that bid the same SREC floor price within a segment will be further ranked according to the date-stamp with the earliest date and time listed first.
- L. The Solicitation Manager shall provide an estimate of a competitive SREC Floor price benchmark for each segment based on the then current market conditions and the cost to construct solar projects in the respective segments. For each segment, the Solicitation Manager will also provide a SREC floor price estimate that considers the various program administrative fees that must be paid by borrowers.
- M. After each solicitation has closed, PSE&G will review applications for completeness and allow bidders to remedy minor deficiencies. By approximately Day 16 of each solicitation schedule, PSE&G will reject any applications that are either incomplete or have not provided the required Application Fee (see “Basis for Rejection”). PSE&G will then provide remaining applications to the Solicitation Manager who will analyze the bids, by segment, and provide guidance to the Company regarding competitive SREC Floor prices and the competitiveness of individual segments based on such factors as the number of bidders, a statistical analysis of bids to identify and reject outliers, kW bid and range of pricing. The Solicitation Manager shall also provide a copy of its recommendation to BPU Staff and Rate Counsel. This review process by the Solicitation Manager will ensure that only cost effective projects are selected.
- N. Once the ranked list of qualified projects has been identified, each capacity block will be filled until the capacity block, as defined in the Program Rules, is fully allocated.
- O. If the capacity of the bids received and accepted (through the solicitation review process described above) is equal to or less than the segment capacity block size:
 - i. All projects will be conditionally accepted, and will be considered for further screening, such as credit and interconnection review.
 - ii. During each solicitation, underutilized capacity from either the Res-Aggregated or Large Non-Residential segments may be reallocated to other oversubscribed segments for that same solicitation, except that for the first solicitation, any unused capacity (kW) in the Res-Aggregated Segments will be added to its segment’s capacity in the second solicitation.
 - iii. After any reallocation of unused capacity to other oversubscribed segments, as applicable, any remaining unused capacity in a segment will be added to the capacity block for that segment in the next solicitation.

- P. If an individual project by virtue of its size would cause the capacity in a particular segment to be over-subscribed, PSE&G will accept the project and lower the capacity of the next available capacity block for that segment by the amount the particular segment was over-subscribed. For example, if by accepting a 1 MW project, the Large Non-Res segment capacity of 11.972 MW (Solicitation #1) is exceeded by 0.2 MW, the Large Non-Res segment for Solicitation #2 will be reduced from 5.986 MW to 5.786 MW.
- Q. Where appropriate, applicants will be notified after the close of the solicitation that their projects have been Conditionally Accepted subject to further review and acceptance on other loan criteria such as credit and interconnection considerations.
- R. Applications that met the acceptance criteria but were not accepted because of capacity limitations will be placed on a pending list. If conditionally accepted projects screen out, or opt out, before the current solicitation close date, applications on the pending list will be substituted according to their original rank order.
- S. Applicants remaining on the pending list after the solicitation close date will be notified and may then participate in the next solicitation; however, they will keep their original timestamp. During the open period for the next solicitation, these applicants will have the option to modify their bid floor price. Applicants who choose not to enter the next solicitation will have their application fee returned.
- T. Applicants who successfully pass the credit and interconnection reviews will be issued loan commitments.

4. Res-Aggregated Segment

Third parties that aggregate residential customers will be treated as non-residential applicants under the Res-Aggregated Segment. For the solicitations, they will be required to bid individual residential projects including individual SREC Floor Prices. After review by the Solicitation Manager, the final group of selected residential projects will be combined and the third party aggregator will be assigned the capacity of the combined residential projects and from then on will be treated as a non-residential applicant for credit review and loan management. In the event that individual residential projects have different SREC bid prices, a weighted average SREC bid price will be calculated. The weighted average SREC floor price will be rounded to the nearest \$5.00 increment. Once individual residential projects have been accepted and the third party aggregator has been assigned capacity, substitute projects will not be allowed.

Landfills / Brownfields Segment

1. Objective

The objective of the Landfills/Brownfields Segment of the Solar Loan III program is to provide a long term, stable and reliable source of financing for customers who wish to install solar systems. Awards are made through a competitive solicitation process in order to ensure that only the most cost effective projects in each segment receive loans.

2. Eligibility Requirements

- A. All solar projects must be installed within PSE&G's electric service territory.
- B. The Landfill segment will consist of either landfills or brownfields (up to 5 MW per project) as defined in P.L.1999, c.23 (C.48:3-49) et al.
- C. Projects may either be grid-connected or net-metered. Net-metered projects must be installed at a customer location that receives (or that will receive in the case of new construction) retail electricity service from PSE&G.
- D. The solar photovoltaic panels must have a minimum 20-year output warranty.
- E. Projects accepted under this program will be ineligible for any benefits from other PSE&G or BPU renewable energy programs, except for net metering and the SRECs generated by the solar system.
- F. Projects under construction but not in commercial operation are eligible to apply for the Solar Loan III Program. "Commercial Operation" means that the system is operating and has received its final inspection in preparation for the issuance of SRECs.
- G. Loan applicants must be registered to do business in New Jersey.
- H. The applicant must meet minimum insurance requirements as specified in the Solar Loan Agreement.
- I. The applicant must make provision for solar system maintenance for the duration of the loan term.
- J. All systems that are located in PSE&G's electric service territory and are eligible for SRECs will be eligible to participate.

3. Competitive Solicitation Process for the Landfill Segment

- A. Applicants must submit a complete application package including the credit application and appropriate loan application fee to participate in the solicitation process.

- B. PSE&G will hire an independent Solicitation Manager ("SM") selected through a competitive bid process who will review and rank the bids received and provide guidance to the Company regarding competitive SREC Floor prices and the competitiveness of individual segments based on such factors as the number of bidders, a statistical analysis of bids to identify and reject outliers, kW bid and range of pricing.
- C. The following is a typical solicitation schedule; however, PSE&G may modify the schedule based on market conditions, administrative workload, and other factors:

EVENT	DATE
Solicitation "X" Opens	Day 1
SM Provides SREC Floor Price Benchmark	By Day 5
Deadline for Participants to Submit Offers	Day 5
PSE&G Preliminary Offer Review, Receive App. Fee, & Remedy Minor Deficiencies	Day 6-15
PSE&G Ranks Qualified Offers first by Bid Price & then by Date/Time Received	Day 16
SM Reviews Bids & Provides Recommendations to PSE&G	Day 17-19
PSE&G Notifies Applicants of Status (via email)	Day 20
PSE&G Commences Secondary Project Credit & Interconnection Review and Landfill Technical Review as appropriate	Day 21
Solicitation "X" Closes - Pending Applicants are Notified (via email)	Day 40
PSE&G Posts Solicitation Results on website	Day 41
Solicitation "X+1" Opens	Abt. Day 45

Note: All dates are business days, e.g. Day 5 is the fifth business day after the solicitation began.

- D. The actual solicitation schedule will be published on the PSE&G website.
- E. Any applicant whose project and credit application is not complete and whose application fee has not been received by Day 15 will not be considered for the pending solicitation.
- F. The Landfill segment capacity size is 5 MW.
- G. The Landfill segment will only participate in the first solicitation.
- H. PSE&G will conduct a competitive solicitation process through which a potential borrower will submit a loan application with a proposed SREC floor price specific to their project.
- I. Proposed SREC floor prices must be in multiples of \$5.00
- J. Within the Landfill segment, qualified projects will be ranked from the lowest to the highest SREC floor price.
- K. Applicants that bid the same SREC floor price will be further ranked according to the date-stamp with the earliest date and time listed first.

- L. The Solicitation Manager shall provide an estimate of a competitive SREC Floor price benchmark for the Landfill segment based on the then current market conditions and the cost to construct solar projects in this segment. The Solicitation Manager will also provide an SREC floor price estimate that considers the various program administrative fees that must be paid by borrowers.
- M. After each solicitation has closed, PSE&G will review applications for completeness and allow bidders to remedy minor deficiencies. By approximately Day 16 of each solicitation schedule, PSE&G will reject any applications that are either incomplete or have not provided the required Application Fee (see “Basis for Rejection”). PSE&G will then provide remaining applications to the Solicitation Manager who will analyze the bids and provide guidance to the Company regarding competitive SREC Floor prices and the competitiveness of the segment based on such factors as the number of bidders, a statistical analysis of bids to identify and reject outliers, kW bid and range of pricing. The Solicitation Manager shall also provide a copy of its recommendation the BPU Staff and Rate Counsel. This review process by the Solicitation Manager will ensure that only cost effective projects are selected.
- N. The capacity block will be filled by the ranked list of qualified projects until the capacity is fully allocated.
- O. If the capacity of the bids received and accepted (through the solicitation review process described above) is equal to or less than the segment capacity block size:
- i. All projects will be conditionally accepted, and will be considered for further screening, such as credit and interconnection review.
 - ii. Underutilized capacity will be reallocated to another segment.
 - iii. If an individual project, by virtue of its size, would cause the capacity in the Landfill segment to be over-subscribed, PSE&G will accept the project based on the remaining capacity available. For example, if by accepting a 2 MW project, the Landfill segment capacity of 5 MW is exceeded by 1 MW, PSE&G would size the loan based on a 1 MW project size. If this is unacceptable to the applicant, the application will be rejected and the next qualified project will replace it. This process will continue until either (a) the capacity block has been filled or (b) there are no more qualified projects available.
- P. Where appropriate, applicants will be notified after the close of the solicitation that their projects have been conditionally accepted subject to credit, interconnection and engineering reviews.
- Q. Applications that met the acceptance criteria but were not accepted because of capacity limitations will be placed on a pending list. If conditionally accepted projects screen out, or opt out, applications on the pending list will be substituted according to their original rank order.

- R. Engineering Review - PSE&G will require applicants to demonstrate proof of project viability through geotechnical engineering reports, landfill closure certifications and other documents as required. PSE&G may also require applicants to show proof of site control and a minimum level of site development before being designated as a qualified applicant. PSE&G will engage a third party engineering firm to assist in project reviews. Applicants that are required to be certified pursuant to the Board's Order implementing the Solar Act of 2012, N.J.S.A. 48:3-51 subsection (t) must submit their application to the Board no more than 10 calendar days after PSE&G provides notification that they have been conditionally accepted into the Program.
- S. If a project satisfactorily completes the credit, interconnection and engineering reviews, PSE&G will submit to Board Staff and Rate Counsel a Project Selection Assessment and Evaluation report for the project. If, after 10 business days, Board Staff and Rate Counsel do not raise any objections, the applicant will be deemed qualified for the Program and PSE&G will issue a commitment letter.

4. Basis For Rejection

PSE&G will have final authority on whether any particular application is complete and eligible for a solar loan. An application will be rejected for reasons including:

- A. If the application fails to meet eligibility and/or threshold requirements.
- B. If the applicant fails to submit required supporting documentation within the required time frame or is unable to verify or document any material representation within the application.
- C. If there are material misrepresentations in the project application.
- D. If the applicant engages in illegal or improper conduct or attempts to improperly influence PSE&G's decision-making process.
- E. Changes in laws or regulations affecting this program.
- F. If the applicant fails to permit disclosure of information contained in an application to the BPU, PSE&G or PSE&G agents or contractors charged with evaluating the solar project application.
- G. If PSE&G determines that the solar application does not represent a bona fide project or that the applicant will be unable to fulfill the requirements of this solar program.

Agreements

Residential Segment

Under its current Solar Loan programs, PSE&G is operating under an advisory opinion from the NJ Department of Banking and Insurance (“DOBI”) that because of the interest rate charged to consumers, the implementation of those programs would not result in PSE&G being considered to be engaged in the “consumer loan business” as defined under the Licensed Lenders Act, N.J.S.A. 17:11C-1, et seq. The Solar Loan Agreement for the Residential Segment will be added to this manual once PSE&G receives confirmation from the DOBI that its prior determination remains valid for the Solar Loan III Program, at which time PSE&G will commence residential loan solicitations.

Residential Aggregator Segment

SLIII Loan Agreement, Residential Aggregator Segment

Small Non-Residential Segment

SLIII Loan Agreement, Landfill/Brownfield, Small Commercial, Large Commercial Segments

Large Non-Residential Segment

SLIII Loan Agreement, Landfill/Brownfield, Small Commercial, Large Commercial Segments

Landfills/Brownfields Segment

SLIII Loan Agreement, Landfill/Brownfield, Small Commercial, Large Commercial Segments

SOLAR LOAN AGREEMENT

THIS SOLAR LOAN AGREEMENT (“Agreement”), dated as of _____, **2013** is made and entered into by and between Public Service Electric and Gas Company, a New Jersey corporation (“Lender”), having its general offices at 80 Park Plaza, Newark, NJ 07102, and _____ (“Borrower”), having its principal place of business at _____. From time to time throughout this Agreement, each of Borrower and Lender is referred to as, individually, a “Party” and collectively, the “Parties.”

RECITALS

A. The State of New Jersey’s Renewable Portfolio Standards (“RPS”) mandate that all electricity suppliers provide a percentage of their electricity sales from solar generation. To meet this requirement, the New Jersey Board of Public Utilities (the “BPU”), through its Office of Clean Energy, established a program for the use and trading of Solar Renewable Energy Certificates (“SRECs”). The SRECs are tracked using the Generation Attribute Tracking System (“GATS”) operated by PJM-Environmental Information Services or any successor entity (the “SREC Program Administrator”). An SREC represents one megawatt hour of solar electricity production. The New Jersey Clean Energy Program (“NJCEP”) allows for SRECs to be created, verified, tracked, sold to, and eventually retired by, electricity suppliers to meet their RPS solar requirement.

B. To assist the State in achieving its environmental objectives under the New Jersey RPS and New Jersey’s Energy Master Plan, Lender has developed a solar loan program (“Program”) through which Lender will provide long term financing for solar-powered generation projects located within Lender’s electric distribution service territory. The BPU approved the Program in its Order dated May 31, 2013 in Docket No. EO12080726 (the “2013 Order”).

C. Borrower submitted a loan application (the “Program Application”) to Lender for term financing for certain solar generation systems (each such system being a “Residential Installation”) to be constructed at the residences identified on Exhibit A. Borrower will hold legal title to each Residential Installation and will have an agreement (each such agreement being a “Customer Agreement”) with the owner(s) of each such residence (the “Customer”) authorizing Borrower to install, own and operate the Residential Installation.

D. Lender has agreed to provide Borrower with term financing, and Borrower accepts such financing in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

1. Definitions. As used herein, unless the context clearly requires otherwise, the following terms shall have the following corresponding meanings:

“2013 Order” has the meaning ascribed to such term in the Recitals.

“90% Amount” has the meaning set forth in Section 2.5(b)(i).

“Actual Loan Balance” means the then-current unpaid principal and unpaid accrued interest under the Loan.

“Actual Payments” has the meaning set forth in Section 2.5(b)(i).

“Administration Fee” means a fee equal to the product of the Aggregate Installed Capacity of the pool and eighty-five dollars (\$85.00), which amount shall be paid by Borrower to Lender at the closing of the Loan as a deduction from the Loan proceeds.

“Aggregate Installed Capacity” of the Pool as of any date means the sum of the Installed Capacity of each Eligible Residential Installation which is part of the Pool as of such date.

“Agreement” has the meaning ascribed to such term in the Preamble.

“Annual True-Up” has the meaning set forth in Section 2.5(b)(i).

“Biennial True-Up” has the meaning set forth in Section 2.5(b)(ii).

“Borrower” has the meaning ascribed to such term in the Preamble.

“BPU” has the meaning ascribed to such term in the Recitals.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks in the City of Newark, State of New Jersey are required or permitted by law to close.

“Collateral” means: (a) the Residential Installations, the SRECs produced by the Residential Installations, and all related rights to said SRECs, including any other Environmental Attributes arising from and/or out of the Residential Installations; (b) the Project Equipment; (c) the Project Documents; (d) any other assets or property in which Lender is granted a security interest, lien or pledge as security for the Obligations; and (e) all accessions, additions, substitutions, products and Proceeds to and of the foregoing.

“Continuing Operation” means all the Residential Installations are generating electricity for usage at their respective locations, and each Residential Installation meets all technical, financial and performance requirements associated with its intended use and pursuant to the performance specified in the applicable Project Documents.

“Contract Year” means: (a) in the event execution of this Agreement occurs on the first day of a calendar month, the twelve-month period commencing on the date of execution of this Agreement and ending on the last day of the twelfth month thereafter; or (b) in the event execution of this Agreement occurs on a day other than the first day of a calendar month, the

twelve-month period commencing on the first day of the month following execution of this Agreement and ending on the last day of the twelfth month thereafter, provided that in such event the first Contract Year of this Agreement shall be a period in excess of twelve months as such first Contract Year shall commence on the date of execution of this Agreement rather than the first day of the next succeeding month. By way of example, if this Agreement were to be executed on April 7, 2012, the first Contract Year would commence on April 7, 2012 and conclude on April 30, 2013, and the second Contract Year would commence on May 1, 2013 and conclude on April 30, 2014, continuing thereafter accordingly.

“Credit Criteria” means that Customer or Proposed Transferee has a credit quality of at least [tbd].

“Customer” has the meaning ascribed to such term in the Recitals.

“Customer Acknowledgment and Assignment” means the Acknowledgment and Assignment signed by each Customer with respect to the applicable Residential Installation substantially in the form of Exhibit B.

“Customer Agreement” has the meaning ascribed to such term in the Recitals.

“Eligible Residential Installation” means a Residential Installation: (i) which was completed and is operating in accordance with the Project Documents for that Residential Installation, (ii) which complies with all Program requirements and the 2013 Order, and (iii) with respect to which there is no default in performance or otherwise by any party with respect to the Project Documents for the Residential Installation including the Customer Agreement.

“Environmental Attribute” has the meaning set forth in Section 6(b).

“Equipment” or “Project Equipment” means all of Borrower’s now owned and hereafter acquired rights, title, and interests in and to any and all solar panels which are part of the Residential Installations and equipment, machinery, components, wiring, meters, replacement parts and consumables comprising or related to such Residential Installations.

“Events of Default” has the meanings set forth in Section 11.1.

“Floor Price” means [_____] dollars (\$000.00) per SREC.

“Ineligible Residential Installation” means a Residential Installation owned by Borrower which ceases to be an Eligible Residential Installation during the Term.

“Installed Capacity” of a Residential Installation is the installed capacity of such Residential Installation, expressed in kilowatts, listed on Exhibit A.

“kW” means kilowatt, as measured in direct current.

“Lender” has the meaning ascribed to such term in the Preamble.

“Lender’s SREC Account” means the Lender’s SREC account with the SREC Program Administrator.

“Liens” means any and all mortgages, liens, charges, security interests and/or encumbrances of any kind, or pledges or deposits of any nature.

“Loan” has the meaning set forth in Section 2.1.

“Loan Amortization Schedule” means the amortization schedule attached to the Note.

“Loan Documents” means this Agreement, the Note, the Security Agreement and such other documents, instruments and certificates delivered in connection with one or more of the foregoing.

“Market Price” means the most recent clearing price for SRECs of the same vintage as the SRECs created by the Pool, which clearing price is obtained from the SREC auction periodically conducted in accordance with the BPU Order dated November 7, 2008, in Docket Number EO07040278 or any subsequent BPU order (the “SREC Auction”). If there is no SREC Auction clearing price for the SRECs of a particular vintage, then the Market Price for the SRECs created by the Pool will be the auction clearing price for SRECs of the most recent vintage. For example, if there has been no previous SREC Auction clearing price for a 2016 vintage SREC, the Market Price for such SREC will be the most recent auction clearing price for a 2015 vintage SREC. If the SREC Auction is discontinued and the BPU does not approve an alternative SREC sales process, or if the Market Price cannot otherwise be determined from the SREC Auction, then the Market Price will be determined by Lender in a commercially reasonable manner.

“NJCEP” means the BPU’s New Jersey Clean Energy Program, or any successor program thereto.

“Note” has the meaning set forth in Section 2.2.

“Obligations” means any and all obligations, liabilities, covenants and agreements of Borrower under the Loan Documents, and any and all costs and expenses of, or incurred by, Lender in collecting any of the foregoing and in enforcing the provisions of this Agreement, including all court costs and/or reasonable attorneys’ fees and expenses in any action between Lender and Borrower and/or Lender and any third party based on the Loan Documents.

“Operations and Maintenance Agreement” means that certain Agreement for the Operations and Maintenance of the Residential Installations which comprise the Pool between Borrower and the Qualified Maintenance Provider as such agreement is amended from time to time with the prior written consent of Lender.

“Owner” means the owner(s) of 100% of the equity of Borrower.

“Permitted Encumbrances” means Liens on the Collateral (a) disclosed by Borrower to Lender and set forth in Exhibit C attached hereto, and (b) Liens in favor of Lender.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether national, federal, state, county, city, municipal, or otherwise), including any instrumentality, division, agency, body or department thereof.

“Pool” means the Residential Installations listed on Exhibit A.

“Proceeds” means any and all consideration received from the sale, exchange, collection or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property which constitutes Collateral, and shall include all cash and negotiable instruments received or held on behalf of Lender relating to the payment of accounts and any and all property of whatever nature received and/or held by Borrower or on behalf of Lender.

“Project Documents” means collectively: (a) the Customer Agreements for each Residential Installation which is part of the Pool; (b) the Operations and Maintenance Agreement; (c) lien waivers executed by every supplier, vendor or contractor performing work or providing services or equipment to the Residential Installations; (d) lien waivers and subordination agreements executed by Borrower’s other lienholders, mortgagees and landlord, if applicable; (e) any and all applicable permits, licenses, easements, variances and other authorizations; (f) Program Application documents, project plans and pro formas, and other Residential Installation-related documents; (g) warranties from Equipment manufacturers or contractors; and (i) any and all other appropriate documents as may be requested by Lender.

“Proposed Transferee” has the meaning set forth in Section 16.2.

“Qualified Maintenance Operator” means _____ or such entity acceptable to Lender in its sole discretion.

“Quarter” or “Quarterly” means a quarterly period measured based on Contract Years.

“Quarterly Amortization Statement” has the meaning set forth in Section 2.5(a).

“Repayment Election” has the meaning set forth in Section 2.5(c).

“RPS” has the meaning ascribed to such term in the Recitals.

“Residential Installation” has the meaning ascribed to such term in the Recitals.

“Scheduled Loan Balance” has the meaning set forth in Section 2.5(b)(ii).

“Security Agreement” means that certain Security Agreement, dated concurrently herewith, setting forth the terms, conditions, obligations and rights of the Parties as to the Collateral.

“SRECs” has the meaning ascribed to such term in the Recitals.

“SREC Processing Fee” means an annual fee to be paid by Borrower to Lender in an amount which shall initially be ten and 18/100 dollars (\$10.18) per SREC generated by the Residential Installations which comprise the Pool and then adjusted annually pursuant to the 2013 Order.

“SREC Program Administrator” has the meaning ascribed to such term in the Recitals or any successor to the SREC Program Administrator recognized by the State of New Jersey.

“Term” has the meaning set forth in Section 2.4.

2. Loan; General Terms.

2.1. Loan Agreement. Subject to the terms and conditions of this Agreement, and the satisfaction of all requirements set forth in this Agreement, Lender agrees to make available to Borrower for the sole purpose of reimbursing a portion of the costs incurred in engineering, procuring, installing and constructing the Residential Installations which comprise the Pool, and Borrower accepts for such sole purpose under the terms of this Agreement, the amount of **AMOUNT and 00/100 DOLLARS (\$)**, which amount is hereafter referred to as the “Loan.” At the closing of the Loan, the Administration Fee shall be deducted from the Loan and retained by Lender.

2.2. Promissory Note. The Loan shall be evidenced by a secured promissory note (“Note”), made by Borrower and delivered to Lender concurrently with the execution of this Agreement.

2.3. Interest Rate. The Loan shall bear interest at the rate of **11.179%** per year, or at a daily rate of .0306% (calculated as $11.179\% \div 365$) (the “Interest Rate”). Interest shall be calculated daily and compounded monthly based on the average daily outstanding loan balance (excluding the current month’s accrued interest) *multiplied by* the daily interest rate *multiplied by* the number of days in such month. Regardless of whether paid in cash or SRECs as provided hereunder, without limiting any of Lender’s rights hereunder, to the extent that the interest component of any periodic payment is not paid on the payment due date indicated on the Loan Amortization Schedule, the unpaid portion of such interest component shall bear interest at the stated rate. To the extent this occurs, the effective rate of interest on the Loan will be higher than 11.179% per year.

2.4. Term. This Agreement shall have a term of ten (10) years from the date hereof (the “Term”). Borrower may prepay the Loan prior to the end of the Term in accordance with the provisions of Section 2.6.

2.5 Repayment of Loan.

(a) The full amount of the Loan, and all interest due thereon, is payable in periodic installments as set forth in the Note. All amounts due under this Agreement and the Note can be paid in (i) cash or (ii) the value of the SRECs created by the Pool. Following each Quarter, Lender will provide an amortization statement to Borrower showing the amount paid by Borrower in cash and SRECs, the current balance of the Loan and the expected balance according to the Loan amortization statement (“Quarterly Amortization Statement”).

(b) Repayment with SRECs. Except as provided in Section 2.5(c), the Loan and accrued interest shall be repaid with SRECs, which will be valued at the greater of the Floor Price or the Market Price. At the closing of the Loan and for the duration of the Term, Borrower shall execute such documents as are necessary to assign to Lender all of the SRECs created by the Pool until the Loan is repaid in full. Borrower shall have a continuing obligation to execute such documents as may be necessary to authorize the SREC Program Administrator to automatically transfer SRECs generated from the Pool to Lender’s SREC Account. If the value of the SRECs exceeds the amount due from Borrower for a period under the Loan Amortization Schedule, Lender will apply such excess amount to the Actual Loan Balance. The application of such excess shall not reduce the periodic payments under the Loan Amortization Schedule except that upon full payment of all amounts due with respect to the Loan, no further periodic payments thereunder shall be required.

(i) Annual True-Up. Lender will perform a true-up at the end of every Contract Year (the “Annual True-Up”). Lender will calculate (a) the aggregate value of the SRECs and cash (excluding any Annual True-Up or Biennial True-Up payments made that Contract Year) received from Borrower to pay the Loan for the Contract Year (“Actual Payments”), and (b) ninety percent (90%) of the total payments due with respect to the Loan for the Contract Year as indicated in the Loan Amortization Schedule (the “90% Amount”). Within thirty (30) days from receipt of notice from Lender, Borrower will pay Lender in cash the SREC Processing Fee and an amount equal to the positive difference, if any, between (x) the 90% Amount *minus* (y) the Actual Payments, and such amount will be applied to the Actual Loan Balance. Overdue payments shall accrue interest at the rate set forth in Section 11.2(h) and, in addition, shall be subject to a late fee equal to one percent (1%) of the Actual Loan Balance.

(ii) Biennial True-Up. In addition to performing the Annual True-Up for each Contract Year, Lender will also perform a biennial true-up, the first to take place at the end of the second Contract Year and then every two Contract Years thereafter (the “Biennial True-Up”). Lender will (a) calculate the Actual Loan Balance at the end of the second Contract Year (after giving

effect to any payment required under the Annual True-Up for the current Contract Year) and (b) using the Loan Amortization Schedule, determine the scheduled Loan balance (“Scheduled Loan Balance”) for the corresponding period. Within thirty (30) days from receipt of notice from Lender, Borrower will pay Lender in cash the SREC Processing Fee and an amount equal to the positive difference, if any, between (x) the Actual Loan Balance *minus* (y) the Scheduled Loan Balance, and such amount will be applied to the Actual Loan Balance. Overdue payments shall accrue interest at the rate set forth in Section 11.2(h) and, in addition, shall be subject to a late fee equal to one percent (1%) of the Actual Loan Balance.

(c) Cash Repayment. In the Loan commitment letter, Borrower may elect to repay the Loan on a monthly basis with cash (the “Repayment Election”) in accordance with the Loan Amortization Schedule. The Repayment Election shall be effective for the remainder of the Term unless Borrower submits a revised Repayment Election at least ninety (90) days prior to the end of a Contract Year. Borrower shall not revise its Repayment Election during the Contract Year. Borrower may sell the SRECs created by the SREC Program Administrator in accordance with Section 6(a) below.

(d) All payments with respect to the Loan (whether in cash or SRECs) will be credited against the Loan on the last day of the month and will be applied first, to the payment of accrued interest, and second, to the repayment of the principal amount of the Loan.

(e) Within thirty (30) days following the expiration of the Term, Borrower will pay to Lender the Actual Loan Balance (if any), including interest accrued after the expiration of the Term, all calculated in accordance with Section 2.3.

2.6. Prepayment of Loan.

(a) Voluntary Prepayment. Borrower may prepay all or a portion of the Actual Loan Balance in cash and/or SRECs generated from the Pool and all such SRECs will be valued at the Market Price.

(b) Mandatory Prepayment. Borrower shall promptly notify Lender if any Residential Installation becomes an Ineligible Residential Installation. At Lender’s option, Borrower shall, within thirty (30) days thereafter, prepay the Loan in an amount equal to the *pro rata* share of the Loan, as determined by Lender, represented by the Ineligible Residential Installation.

2.7. Creation of SRECs.

(a) If Borrower elects to repay the Loan with SRECs, Borrower shall deliver to Lender by the fifth (5th) Business Day of each month the monthly generation output data for each Residential Installation in the format prescribed by Lender. Lender shall thereafter deliver the generation output data to the SREC Program Administrator, which shall create the SRECs. Lender shall not be responsible for a delay in the creation of SRECs if Borrower fails to timely

deliver the generation output data to Lender. Borrower shall provide Lender with read-only access to Borrower's Data Acquisition System for the purpose of validating monthly metering data.

(b) If Borrower elects to repay the Loan with cash, Borrower must, at its sole cost and expense: (i) establish and maintain an electronic account with the SREC Program Administrator for each Residential Installation, and (ii) provide monthly generation output data for each Residential Installation to the SREC Program Administrator, which shall create the SRECs. Lender shall have no obligation to report Borrower's generation output data to the SREC Program Administrator. Borrower shall (x) provide Lender with a copy of monthly generation output data delivered to the SREC Administrator and read-only access to Borrower's Data Acquisition System for validation purposes, and (y) upon receipt of an invoice from Lender, pay on an annual basis the SREC Processing Fee for all SRECs created by each Residential Installation within the Pool.

2.8. Inspections. Upon written notice to Borrower, Lender (or its designee) may inspect any Residential Installation to confirm that Borrower is operating and maintaining such Residential Installation in accordance with this Agreement. Borrower (i) shall not rely on Lender's inspection for any purpose and (ii) shall be solely responsible for ensuring that each Residential Installation is installed, constructed, operated and maintained in accordance with the applicable Customer Agreement. Lender's inspection of any Residential Installation or the disbursement of a Loan shall not be deemed to constitute Lender's approval or warranty of such Residential Installation, the Equipment or any contractor or vendor and/or its continued operation.

2.9. Regulatory Changes; Acceleration of Loan.

(a) Change in Rate Treatment. The Borrower hereby waives all rights to initiate any proceeding to challenge the regulatory treatment accorded Lender's recovery of net revenue requirements associated with the Program as approved by the BPU in the 2013 Order. In addition, if any legislative, judicial or governmental entity of competent jurisdiction impairs or disallows the full and timely recovery through the Solar Loan III component of Lender's electric RGGI Recovery Charge or a like successor clause or rate mechanism including recovery of net revenue requirements associated with the Program as provided for in the 2013 Order, then, at the option of Lender and upon written notice to Borrower, the outstanding balance of the Loan and any other amounts due Lender under this Agreement shall be determined, and such outstanding amount shall become due and payable in cash by Borrower within thirty (30) days of the date of Lender's written notice to Borrower.

(b) Change in Regulation. If the existing New Jersey regulations governing the Program are amended, superseded and/or otherwise no longer in force (a "Regulatory Change"), Lender may accelerate the repayment of the unpaid portion of the Loan and accrued interest unless:

(i) Borrower continues to operate each Residential Installation in accordance with this Agreement;

(ii) The minimum monetary value of the SRECs created by the Pool is the Floor Price, and the terms in this Agreement governing the amortization of the Loan and payment of all accrued interest remain in full force and effect; and

(iii) The BPU continues to allow Lender to enjoy the comparable treatment, as described more fully in Section 2.9(a) above, with regard to those Residential Installations in operation and creating SRECs after the Regulatory Change as Lender enjoyed prior to the Regulatory Change.

3. No Assumption of Liabilities. Lender shall not assume any liabilities and obligations of Borrower of any kind or nature whatsoever, including any liabilities and obligations of Borrower under any of the Project Documents.

4. Conditions Precedent to Advancing the Loan. Lender shall not be obligated to advance the Loan unless the following conditions are satisfied, in form and substance satisfactory to Lender and its counsel, on or prior to the closing of the Loan:

(a) All of the Loan Documents shall have been completed, duly executed and delivered by Borrower to Lender.

(b) Lender shall have received: (i) record searches identifying all financing statements, judgments, tax liens and other Liens on file with respect to Borrower in all jurisdictions (state and county) as Lender may deem appropriate, indicating that no Person, other than Lender and any other holders of Permitted Encumbrances, has any Lien on any of the Collateral; (ii) record owner and mortgage lien searches of the real estate records applicable to each Residential Installation; (iii) duly executed Lien waivers or subordinations from contractors, vendors, lienholders, mortgagees, the Customer for each Residential Installation, as applicable, and such other persons or entities as Lender shall determine, which shall be in full force and effect, and in form and substance satisfactory to Lender; (iv) satisfactory evidence of all insurance coverage required in this Agreement; and (v) any and all other documents related to the Collateral or Borrower that Lender reasonably requests.

(c) Lender shall have received all Project Documents with respect to each Residential Installation as Lender may request, each of which shall be in full force and effect, and in form and substance satisfactory to Lender.

(d) Borrower shall have notified Lender in writing that each Residential Installation is substantially complete and meets all technical and performance requirements associated with its intended use.

(e) Lender shall have received a field inspection report confirming that each Residential Installation has achieved Continuing Operation at the scheduled Installed Capacity and is capable of producing SRECs.

(f) Revenue-grade metering equipment capable of measuring the electricity generated from the continued operation of each Residential Installation throughout the Term shall have been installed in accordance with the Program and BPU requirements.

(g) If Borrower is repaying the Loan with cash, Borrower shall have opened a SREC Account.

(h) If Borrower is repaying the Loan with SRECs, Borrower shall have assigned to Lender all rights to receive the SRECs produced by each Residential Installation.

(i) Borrower shall have certified to Lender that neither Borrower nor any Customer has neither applied for nor received any rebate under the BPU's CORE Program.

(j) There is no: (i) injunction, writ, preliminary restraining order, or any order of any nature issued by an arbitrator, court or other governmental authority directing that the transactions provided for herein and/or in the Project Documents not be consummated; or (ii) suit, litigation, investigation hearing or proceedings of or before any arbitrator, court or other governmental authority pending or threatened against Borrower and/or the Customer, or any of their respective properties, revenues or assets, with respect to this Agreement, the Security Agreement, the Note, the Project Documents, and/or any of the transactions contemplated hereby or thereby that could result in a material and adverse change thereto.

(k) No Event of Default under any agreement applicable to Borrower has occurred and is continuing or will result from the execution of this Agreement.

(l) The representations and warranties of Borrower contained in this Agreement shall be true and correct as of the date of the closing of the Loan.

(m) The Program, or any direct successor program thereto, remains in effect.

(n) Lender shall have received a Customer Acknowledgment and Assignment for each Residential Installation.

(o) Borrower shall have certified to Lender that each Customer satisfies the Credit Criteria.

(p) No event shall have occurred since the date of the execution and delivery of the Program Application which, in the good faith opinion of Lender, is likely to materially and adversely affect the financial and/or credit prospects of Borrower, the operability of the Residential Installations which comprise the Pool as contemplated or otherwise impair the ability of Borrower to perform its obligations under this Agreement, the Security Agreement, the Note, the Project Documents and/or other Loan Documents.

5. Security Agreement. As security for the payment and performance of the obligations of Borrower hereunder, the Note and the Loan Documents, Borrower, concurrently with its execution of this Agreement, will execute and deliver to Lender a fully executed Security Agreement.

6. SRECs and Environmental Attributes.

(a) A Borrower that has elected to repay the Loan in cash pursuant to Section 2.5(c) may resell the SRECs generated by the Pool to a third party so long as Borrower first notifies Lender in writing of the sale price and quantity of SRECs to be sold. Within thirty (30) days after the consummation of the sale, Borrower must pay to Lender the entire sale proceeds (less reasonable broker commission) for use towards (i) the payment of all accrued interest on the Loan, then (ii) the amortization of the principal amount of the Loan in the month Borrower receives the sale proceeds.

(b) For purposes of this Agreement, an “Environmental Attribute” is an instrument used to represent the environmental costs and/or benefits associated with a fixed amount of electricity generation from each Residential Installation, which may include any successor to an SREC. For each Residential Installation, Environmental Attributes represent the general environmental benefits of renewable generation such as, for example, and not by means of exclusion, air pollution avoidance. The exact quantity of the environmental benefit (e.g., pounds of emission reductions of a given pollutant) is not indicated by an environmental attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not a trading market for such pollutants or benefits exists. Borrower hereby assigns all Environmental Attributes to Lender. Lender will use commercially reasonable methods to monetize such Environmental Attributes and use the proceeds to repay the Loan.

7. Representations and Warranties of Borrower.

7.1. Organization, Standing and Power. Borrower is a _____ duly organized, validly existing and in good standing under the laws of _____. Borrower has qualified to do business in each and every jurisdiction where the failure of Borrower to so qualify would have a material and adverse impact of Borrower’s ability to perform under this Agreement, the Security Agreement, the Note and/or any other Loan Document. Borrower has all requisite power and authority to own, lease and operate its properties, to carry on its business as now being conducted, to operate each Residential Installation substantially as contemplated by the Project Documents, and to execute, deliver and perform this Agreement, the Note, the Loan Documents and all writings relating hereto and thereto. All of Borrower’s federal, state, local and foreign income, profits, franchise, sales, use, occupation, property, excise and other tax returns and tax reports, if any, required to be filed with respect to the business and assets of Borrower have been filed, as of, at a minimum, the date hereof with the appropriate governmental agencies, and all taxes, governmental charges and assessments due and payable with respect to such returns and reports have been paid.

7.2. Authorization of Borrower. The execution, delivery and performance by Borrower of this Agreement and all other writings relating hereto and thereto have been duly and validly authorized by Borrower. No consent or approval of or notification to any party, other than any consent or approval that has been obtained, is required in connection with the execution, delivery and performance by Borrower of this Agreement, the Security Agreement, the Note, the other Loan Documents and/or any writing relating hereto and thereto or the consummation of the transactions contemplated hereby or thereby.

7.3. Litigation Claims and Proceedings. No litigation, suits, claims, or judicial or administrative proceedings of any nature are pending or, to the best knowledge of Borrower, threatened against Borrower, Borrower's property or any Residential Installation, the effects of which would have a material adverse effect on Borrower, its business, its financial condition and/or the Pool.

7.4. Liens or Encumbrances on Collateral. Borrower represents that there are no liens on the Collateral other than the Permitted Encumbrances.

7.5. Laws and Regulations. Borrower is not in violation of any federal, state or local laws, ordinances or regulations pertaining to this Agreement, the Security Agreement, the Note, any of the Project Documents and/or any of the transactions contemplated in any of the foregoing.

7.6. Non-contravention. The Loan Documents do not violate any agreements to which Borrower is a party or by which Borrower or its assets are bound.

7.7. Disclosures. No representation or warranty by Borrower contained in this Agreement, and no statement contained in any certificate, schedule, exhibit, list or other writing furnished to Lender in connection with this transaction and/or in connection with the Pool contains any material untrue statement of fact or omits to state any material fact necessary in order to make the statements contained herein or therein not materially misleading. All copies of all writings furnished to Lender hereunder, or in connection with the transactions contemplated hereby, are true and complete in all material respects. All schedules and exhibits to this Agreement are true and complete in all material respects.

7.8. SRECs. The SRECs produced by the Pool and delivered to Lender hereunder were created in compliance with all applicable laws and are eligible for use in complying with the RPS. Borrower shall promptly notify Lender of any change in circumstance which causes the foregoing representation to no longer be true including providing a copy of any notice received from any governmental authority indicating or determining that the SRECs are no longer RPS-eligible. Lender shall not be required to pay down the Loan with SRECs that are not RPS-eligible.

7.9. Special Purpose Entity. Borrower was formed solely for the purpose of constructing, owning and operating the Residential Installations which comprise the Pool and financing such construction with tax equity financing, if any, and this Loan. Borrower has never engaged in any other activities and has no assets which are not related to such matters.

7.10. No other Indebtedness. Borrower has no indebtedness other than its obligations under the Loan.

7.11. No Liens. Borrower has no Liens on its assets other than the Liens it is granting to Lender under the Security Agreement.

8. Representations and Warranties of Lender. As of the date hereof, Lender represents and warrants that Lender is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey and has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

9. Covenants of Borrower.

9.1. Performance of Customer Agreement. From and after the date hereof, Borrower shall:

(a) forward to Lender copies of all notices, requests, correspondence and other communications relating to the Project Documents and/or any Residential Installation promptly upon receipt thereof;

(b) manage, operate and maintain each Residential Installation in compliance with all provisions of each Customer Agreement, the applicable Project Documents, manufacturer's specifications and with all applicable federal, state and local laws, ordinances and regulations;

(c) maintain and/or cause to be maintained the Residential Installations in good operating condition, reasonable wear and tear excepted;

(d) file when and as due all federal, state, local and foreign income, profits, franchise, sales, use, occupation, property, excise and other tax returns and tax reports required to be filed with respect to the business and assets of Borrower with the appropriate governmental agencies, and pay, when and as due, all such taxes to all such appropriate governmental agencies;

(e) advise Lender in writing of any breach or default, or any circumstances that constitute, or with the passage of time will come to constitute, a breach or default under, or in any way impair the validity or enforcement of any obligation or tend to reduce the amount payable from the amount under, any of the Project Documents;

(f) advise Lender in writing of any material and adverse change or any event, occurrence or circumstance that is likely to cause a material and adverse change in the Pool and/or the condition, financial or otherwise, business or operations of Borrower;

(g) authorize Lender to access and review Borrower's information on record with the SREC Program Administrator; and

(h) at its sole cost and expense: (i) take any and all actions necessary to defend its respective title, rights and interests in and to the Collateral against all Persons and, further, to defend the security interest of Lender in the Collateral and the priority thereof against any Lien that is not a Permitted Encumbrance; and (ii) advise Lender promptly, in reasonable detail, of any Lien made or asserted against any of the Collateral and of the occurrence of any event that may have an adverse effect on the aggregate value of the Collateral and/or on the security interest in the Collateral granted to Lender.

9.2. Conduct of Business. Except as otherwise permitted in this Agreement, from and after the date hereof Borrower shall not:

(a) engage in any activities other than ownership and maintenance of the Residential Installations including obtaining any financing related thereto;

(b) incur any indebtedness except for the Loan made by Lender hereunder;

(c) mortgage, pledge, or otherwise encumber or subject to lien or suffer to be encumbered or subjected to lien, or sell, dispose of, or agree to sell, dispose of or lease or license to others or agree to so lease or license, any of its assets including any assets used or useful in any Residential Installation, including any real or tangible personal property and, or commit to do any of the foregoing;

(d) cancel or change any material existing policy of insurance relating to any Residential Installation, unless, however, replaced by an insurance policy providing substantially the same coverage;

(e) terminate or amend the Operations and Maintenance Agreement or any Customer Agreement except with the prior written consent of Lender;

(f) (i) enter into any contract or agreement with any of its affiliates, constituents or owners except for the Operations and Maintenance Agreement, (ii) have its assets listed as assets on the financial statements of any other Person, (iii) fail to hold itself out as a legal separate entity distinct from any other Person, (iv) fail to correct any known misunderstanding regarding its status as a separate entity, (v) fail to conduct all its business and hold all its assets in its own name, (vi) commingle its assets with those of any other Person, (vii) guarantee or become obligated for the debts of others, (viii) fail to allocate fairly and reasonably any overhead expenses that have been shared with an affiliate, (ix) fail to maintain adequate capital in light of its contemplated operations, (x) fail to pay its debts and liabilities from its assets, (xi) fail to do all things necessary to observe all organizational formalities applicable to it and to preserve its existence, and (xii) fail to maintain all its books and records, financial statements and bank accounts separate from those of any other Person;

(g) merge or consolidate with any partnership, corporation or other entity of any nature, or change either its name or the address of its principal offices without first giving Lender thirty (30) days' prior written notice of Borrower's intent to do so, or dissolve, liquidate or wind up its affairs, or sell, lease, transfer or otherwise dispose of a significant portion of its assets, or agree to do any of the foregoing; or

(h) sell or relocate the Project Equipment without the prior written consent of Lender.

9.3. Information; Access to Properties; Books and Records.

(a) Borrower shall make available for inspection and copying during normal business hours, as Lender may request and at Lender's expense, promptly and in the form requested, any and all information, including all books and records reasonably requested by Lender. Should Lender, in the course of inspecting any such books and records, discover any material defect therein which amounts to, or reasonably will amount to, an Event of Default under Section 11.1, below, the costs and expenses incurred by Lender in performing such inspection shall be solely borne by Borrower.

(b) Borrower shall afford Lender and Lender's authorized representatives reasonable access to the real and tangible personal property relating to each Residential Installation for the purpose of conducting investigations and examinations thereof. No investigation by Lender or any of Lender's representatives pursuant to this section shall affect any representation, warranty and/or covenant of any Party hereto.

9.4. Insurance.

(a) Borrower shall maintain the following minimum insurance coverages on the Collateral:

(i) Commercial General Liability insurance, for bodily injury and property damage, with limits not less than: FIVE MILLION DOLLARS (\$5,000,000) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate, and naming Lender as an additional insured under such policy, *provided* that if an occurrence or claim impacts the aggregate limits provided under this policy, the Borrower will immediately request the insurer to provide a reinstatement of policy limits or will provide a separate Commercial General Liability policy subject to the above limits;

(ii) All Risk Property insurance covering the replacement costs of each Residential Installation which is part of the Pool and naming Lender as an additional insured and loss payee with respect thereto with a maximum deductible of \$25,000;

(iii) Fidelity/Crime Insurance for limits of at least ONE MILLION DOLLARS (\$1,000,000) per claim; and

(iv) such other insurance as Lender may reasonably require.

(b) The insurance shall be issued by a nationally-known insurance underwriter having an A.M. Best's rating of "A-/VII" or better, or, for underwriters not rated by A.M. Best, a quality equivalent to that of an A.M. Best rating of "A-/VII" or better, as decided by Lender in its sole discretion.

(c) Each policy of insurance shall provide that each insurer will provide Lender with written notice thirty (30) days prior to any termination or modification thereof. If Borrower fails to pay any insurance premium, Lender shall have the right (but shall be under no

duty) to pay such premiums, and Borrower shall promptly reimburse Lender all costs and expenses reasonably incurred by Lender, together with interest thereon at the Interest Rate. In the event of an insurable loss with respect to any Residential Installation, Borrower hereby authorizes and directs Lender, and Lender shall have the sole discretion, to apply or pay all such Proceeds to (i) the payment of the Obligations, (ii) the restoration or replacement of the property destroyed or damaged, or (iii) Borrower.

(d) Each such insurance policy set forth above shall include (i) provisions or endorsements naming Lender as an additional insured; (ii) provisions that such insurance is primary insurance with respect to the interest of Lender and that any insurance maintained by Lender is excess and not contributory insurance with the insurance required hereunder; (iii) a cross-liability or severability of insurance interest clause; and (iv) provisions by which the insurer waives all rights of subrogation against Lender.

(e) Borrower shall provide Lender with Certificates of Insurance acceptable to Lender evidencing the policies, provisions and endorsements listed above and, upon request of Lender, on an annual basis thereafter.

9.5. Maintenance of Equipment. Borrower shall cause each Residential Installation and all related Equipment to be operated and maintained in accordance with the Project Documents and manufacturer's specifications. Borrower shall ensure that all repairs are timely made so that the value and operating efficiency of each Residential Installation is preserved. If Borrower fails to maintain the Equipment as described above, Lender may undertake the maintenance of the Equipment and Borrower shall reimburse Lender upon demand for all of Lender's reasonable incurred costs and expenses plus interest thereon at the Interest Rate.

9.6. Maintenance of Collateral. Borrower will properly maintain the Collateral, defend same against any adverse claims and demands and protect and maintain the Collateral. Borrower shall use commercially reasonable means to ensure that the Equipment is not affixed to real estate in a manner so as to be deemed a "fixture" as defined under the Uniform Commercial Code.

9.7. No Other Interests Granted. Except for the Permitted Encumbrances, Borrower has not executed, will not execute, and has not had or will have executed on its behalf, any assignment, pledge, security or other similar agreement or financing statement covering the Collateral, or any portion thereof, except to Lender, and Borrower will keep the Collateral free from any and all liens, claims, security interests and encumbrances of any kind or nature, except for the assignment, pledge and security interest granted to Lender under this Agreement and the other Loan Documents.

9.8. Change of Place of Business. Borrower will notify Lender in writing prior to any change in Borrower's place of business, or, if Borrower has or acquires more than one place of business, prior to any change in either Borrower's chief executive office and/or the office or offices where Borrower's books and records are kept.

9.9. Change in Name. Borrower will notify Lender immediately in writing of any proposed or actual change of Borrower's name, identity and/or corporate structure.

9.10. Reports and Notices.

(a) Within ten (10) days following the end of each calendar quarter Borrower shall provide an operating report for each Residential Installation for the prior calendar quarter in form and substance satisfactory to Lender certifying that such Residential Installation continues to be an Eligible Residential Installation.

(b) Within ninety (90) days following the end of each calendar year, Borrower shall provide audited financial statements which shall include an annual balance sheet and statement of cash flows for Borrower in form and substance satisfactory to Lender.

(c) Borrower agrees to promptly provide notice to Lender of the following: (i) any Event of Default, (ii) any breach by any Customer or Borrower of its obligations under any Customer Agreement, (iii) any breach by any party to the Operations and Maintenance Agreement of its obligations under such agreement, (iv) any damage to the Project Equipment for any Residential Installation, and (v) any event which would cause any Residential Installation to be an Ineligible Residential Installation.

9.11 Further Assurances. Borrower agrees that, at any time and from time to time after the date hereof, upon the request of Lender, Borrower shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered on its behalf, all such further acts, deeds, assignments, conveyances, transfers, powers of attorney or assurances as may be reasonably required in order to give effect to the intent of this Agreement.

10. Covenants of Borrower and Lender. Borrower and Lender shall cooperate and use all reasonable efforts, in good faith, to make all registrations, filings and applications and to give all notices and obtain all governmental and regulatory consents, authorizations, approvals, licenses, permits, orders, qualifications and waivers necessary or desirable for the consummation of the transactions contemplated hereby.

11. Events of Default; Remedies; Cure Rights.

11.1. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) any failure of Borrower to make any payment of principal or interest as provided in the Note and/or hereunder;

(b) any material representation or warranty made by Borrower herein, or any material statement, information or certification made or provided by Borrower to Lender in connection with this Agreement, the Note and/or the Residential Installations which comprise the Pool, shall prove to have been false or incorrect in any material respect at the time made or given;

(c) an assignment by Borrower of this Agreement or any rights created hereunder in violation of the provisions hereof;

(d) the failure by Borrower to (i) perform or observe any of the material covenants, agreements, terms, conditions or provisions of this Agreement not otherwise specified in this section or to (ii) provide adequate assurance of future performance;

(e) Borrower (i) makes an application for the appointment of a receiver, trustee or custodian for the Collateral and/or any other of Borrower's assets; (ii) files a petition under any chapter of the Bankruptcy Code or any similar federal and/or state law or regulation providing for the relief of debtors; (iii) makes an assignment for the benefit of its creditors; (iv) has a petition in bankruptcy, or other similar relief, filed against it, and such petition is not withdrawn or discharged within ninety (90) days after the date of its filing; or (v) institutes any proceeding or action for the dissolution, liquidation, or termination of Borrower;

(f) Borrower fails to pay, when due, any amount required to be paid to Lender;

(g) Borrower commits an Event of Default under the Security Agreement;

(h) an Event of Default, as such term is defined in any of the Project Documents, occurs;

(i) Borrower breaches and/or defaults under any agreement between Borrower and Lender; and/or

(j) Borrower defaults under any of its obligations to a lienholder with respect to any Permitted Encumbrance.

11.2. Cure Rights; Remedies.

(a) Upon the occurrence of an Event of Default, Lender shall provide written notice of such Event of Default to Borrower, and following receipt of such notice, Borrower shall have two (2) Business Days to fully cure any Event of Default involving the payment of money. For all other Events of Default (except for a default described in Section 11.1(e) above), Borrower shall have thirty (30) days to cure or initiate a cure of the default, provided, however, that Lender shall have the right to terminate the cure period at any time after the thirty (30) day cure period if Lender's rights with respect to the Loan Documents, the Borrower or the Collateral will be materially adversely affected, as determined by Lender in its sole discretion. There shall be no cure rights for a default described in Section 11.1(e) above.

(b) If an Event of Default is not timely cured, Lender, in its sole discretion, may declare the entire outstanding amount of the Loan and all accrued and unpaid interest thereon to be immediately due and payable.

(c) Upon an Event of Default, Lender shall have the right to exercise, at its option, any and all rights and remedies available at law and/or in equity and/or other proceeding. If such Event of Default involves the payment of any amount due under this Agreement, such amount shall bear interest from the date due to the date paid at a rate equal to the interest rate stated in Section 11.2(h), calculated in conformance with Section 2.3.

(d) Upon the occurrence and during the continuance of any condition that, after notice or lapse of time or both, would constitute an Event of Default, Lender shall have the right, as the true and lawful agent of Borrower, with power of substitution for Borrower and in either Borrower's name, Lender's name or otherwise, for the use and benefit of Lender: (i) to offset any amounts owed by Borrower to Lender, which are not paid when due, against any amounts due and owing by Lender to Borrower from any source whatsoever; (ii) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (iii) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any part of the Collateral; (iv) to commence and prosecute any and all suits, actions or proceedings at law or in equity or otherwise in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (v) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating or pertaining to all or any portion of the Collateral; and (vi) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though Lender were the absolute owner of the Collateral for all purposes;

(e) If, in the good faith judgment of Lender, Borrower fails to perform any material obligation hereunder, *i.e.*, if Borrower fails to procure insurance, Lender may take steps, at the sole cost and expense of Borrower, to remedy such failure so as to avoid an Event of Default. Lender shall not be obligated to take any such steps.

(f) Borrower shall reimburse Lender promptly for all reasonable attorneys' fees, costs and expenses Lender incurs in exercising any and all of its remedies hereunder including the costs and expenses incurred by Lender in inspecting Borrower's books and records, as per Section 9.3(a), plus interest on the amount of such costs and expenses from the date incurred by Lender to the date reimbursed by Borrower, calculated in accordance with Section 2.3, and Lender shall be entitled to offset such amounts against payment of any amounts owed to Borrower from any source whatsoever.

(g) Upon the occurrence of an Event of Default, Lender may institute a suit directly against Borrower without first foreclosing on or liquidating the Collateral.

(h) Upon the occurrence of an Event of Default, Lender, in its sole discretion, may increase the rate of interest accruing on the Loan and payable hereunder to the rate of ONE AND ONE-HALF PERCENT (1.5%) per month, calculated in accordance with Section 2.3, for each month after the Event of Default that the Loan remains outstanding.

(i) In the event of a failure of the foregoing remedies, Lender may enter into any place where the Collateral may be located, take possession of said Collateral and restore the condition of the site of such Collateral, the costs of which shall be recouped by Lender as set forth in Section 11.4, paragraph "First".

(j) Lender shall be entitled to recover its reasonable costs and expenses including reasonable attorneys' fees in any legal or equitable action resulting from an Event of Default hereunder.

11.3. Lender's Right to Dispose of Collateral. Consistent with applicable law, Lender shall have the right to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as Lender shall deem appropriate. Lender shall be authorized at any such sale to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale Lender shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Borrower, and Borrower hereby waives to the fullest extent permitted by law, all rights of redemption, stay and appraisal which Borrower now has, or may have at any time in the future, under any rule of law or statute now existing or hereafter enacted.

11.4. Application of Proceeds. Lender shall apply any Collateral consisting of cash and Proceeds:

FIRST, to the payment of all costs and expenses incurred by Lender in connection with such collection or sale, or otherwise in connection with this Agreement or any other agreement in connection with the Loan, including all court costs and reasonable attorneys' fees, costs, disbursements and other charges of its agents and legal counsel, whether incurred in any action or proceeding either between the Parties or between Lender and any third party;

SECOND, to the payment in full of the accrued interest on the Loan;

THIRD, to the payment of the principal of the Loan; and

FOURTH, to Borrower and its successors or assigns, or as a court or agency of competent jurisdiction may otherwise direct.

Lender shall have absolute discretion as to the time of application of any such Proceeds, moneys or balances in accordance with this Agreement. Upon any sale of the Collateral by Lender (by power of sale granted by statute, judicial proceeding or otherwise), the receipt of Lender or of the officer making the sale shall be a sufficient discharge to the purchaser of the Collateral and such purchaser shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication thereof.

11.5 Lender Appointed Attorney-in-Fact. Upon Borrower's receipt of written notice of an Event of Default pursuant to Section 11.2, Lender is automatically appointed without any further action by Borrower to act as attorney-in-fact on behalf of Borrower for the

purposes of carrying out the provisions of this Agreement and taking any action and executing any instrument or other writing which lender may deem reasonably necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest.

12. Amendment and Waivers.

12.1. Amendments, Modifications and Supplements. This Agreement may be amended, modified or supplemented only by an instrument in writing executed by, and delivered on behalf of, each of the Parties.

12.2. Waivers. The representations, warranties, covenants and conditions set forth in this Agreement may be waived only by a written instrument executed by the party so waiving. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition, or breach of any term, covenant, agreement, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of any other condition or of the breach of any other term, covenant, agreement, representation or warranty contained in this Agreement.

13. Survival of Representations, Warranties and Covenants. All representations, warranties and covenants of the Parties contained in this Agreement and/or the Note and/or made pursuant hereto or thereto shall survive until this Agreement expires or is sooner terminated or, in the case of any covenants, until such covenants have been performed fully.

14. Indemnification. Borrower indemnifies and holds harmless Lender and Lender's shareholders, subsidiaries, affiliates, officers, directors, successors and assigns, and the agents, representatives and employees of any and all of the foregoing, from and against any and all liability (including liability in tort, whether absolute or otherwise), obligations, losses, penalties, claims, suits, costs and disbursements, including legal fees and disbursements in any way relating to, or arising out of, the Loan Documents, the Project Documents and/or the Collateral; provided, however, that there shall be no indemnity for liability caused by Lender's gross negligence or willful misconduct. This provision shall survive the expiration or sooner termination of this Agreement.

15. Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally by courier, or by overnight delivery by a nationally recognized overnight delivery service, or five (5) days after mailing if sent by registered or certified mail, postage prepaid, addressed as follows:

If to Lender: Public Service Electric and Gas Company
80 Park Plaza, T-8
Newark, NJ 07102
Attention: Solar Loan Program Administrator

with a copy to Lender's legal counsel at the same address.

If to Borrower:

Attention:

Any party may change the address to which notices or other communications are to be sent to it by giving written notice of such change in the manner provided herein.

16. Assignment.

16.1 This Agreement may not be assigned by any Party without the prior written consent of the other Party. The non-assigning Party shall be entitled to recover its reasonable costs and expenses including administration and attorneys' fees in connection with any such assignment. Notwithstanding the foregoing, however, Lender, without Borrower's consent, may: (a) assign its rights and delegate its obligations hereunder to one or more subsidiaries or affiliates of Lender; or (b) assign its rights to receive moneys and/or SRECs hereunder and under the Note to any unaffiliated third party for financing purposes, provided that no such assignment or delegation shall relieve Lender of its obligations hereunder. Subject to the foregoing, this Agreement shall bind and inure to the benefit only of the Parties and their respective successors and permitted assigns.

16.2 Borrower shall not permit a Customer to sell or transfer its ownership interest in the residence hosting the Residential Installation to a third party (the "Proposed Transferee"), or otherwise assign the Customer Agreement to a Proposed Transferee unless the Proposed Transferee meets the Credit Criteria. Upon request by Lender, Borrower shall provide reasonable documentary evidence confirming that the Credit Criteria have been met. Any transfer or assignment to the Proposed Transferee that fails to meet the Credit Criteria shall cause the relevant Residential Installation to be deemed an Ineligible Residential Installation and the Loan shall become subject to the Mandatory Prepayment provision above. Lender shall be entitled to recover its reasonable costs and expenses including administration and attorneys' fees in connection with the foregoing.

17. Entire Agreement. This Agreement, together with the schedules and exhibits hereto and the Note and the other documents and instruments referred to herein and/or therein, sets forth the entire agreement and understanding of the Parties in respect of the transactions hereby contemplated, and supersedes all prior agreement, arrangements and understandings relating to the subject matter hereof.

18. No Third Party Beneficiary. Nothing in this Agreement is intended or shall be construed to give any person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, other than the Parties.

19. Recitals. The clauses set forth in the Recitals are herein incorporated by reference as though herein set forth at length.

20. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall be considered to constitute one instrument.

21. Section Headings. All section headings are inserted for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement and have no independent significance.

22. Interpretation. In this Agreement the singular includes the plural and the plural the singular; words importing any gender include the other genders; the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, without prejudice to any provisions of this Agreement prohibiting such amendments and other modifications; and references to persons include their respective permitted successors and assigns.

23. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

24. Applicable Law. **THIS AGREEMENT IS GOVERNED EXCLUSIVELY BY AND CONSTRUED IN STRICT ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN THE STATE OF NEW JERSEY WITHOUT REGARD TO NEW JERSEY’S CONFLICT OF LAWS PROVISIONS THAT MAY DEFEAT THE APPLICATION OF NEW JERSEY’S SUBSTANTIVE LAW TO THIS AGREEMENT, THE NOTE AND THE UNDERLYING TRANSACTIONS.**

25. Miscellaneous. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of Lender’s system or any portion thereof to Borrower or to the public, nor affect the status of Lender as an independent public utility corporation, or Borrower as an independent individual or entity. Lender’s review or acceptance of the Residential Installations as Collateral and their operation shall not be construed as confirming or endorsing the design or as any warranty of safety, durability, reliability and/or performance. Lender shall not by reason of such review or failure to review be responsible for the strength, safety, details of design, adequacy, capacity, reliability and/or operation of the Residential Installations, nor shall Lender’s extension of the Loan to Borrower be deemed to be an endorsement of the Residential Installations, in whole or in part.

26. Relationship of the Parties. For purposes of this Agreement, Lender and Borrower expressly agree that the relationship of Lender to Borrower is that of a lender only. The intent of this provision is to clarify and stipulate that Lender is not a partner, fiduciary and/or coventurer of Borrower and that Lender’s sole interest in the Collateral is for the purpose of security for repayment of the obligations of Borrower to Lender and of Grantor to Secured Party under the Security Agreement.

27. Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by law, any right it may have to a trial by jury in respect of any litigation or other action directly or indirectly arising out of, under or in connection with this Agreement.

[signatures appear on the following pages]

DRAFT

IN WITNESS WHEREOF, each Party has caused its duly authorized representative to execute and deliver this Agreement as of the date first above written.

[Borrower]

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me on this ____
day of _____, 201__.

Notary Public of the State of New
Jersey

Public Service Electric and Gas Company

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT A

LIST OF RESIDENCES

(Note: should include Installed Capacity)

DRAFT

EXHIBIT B

FORM ACKNOWLEDGMENT AND ASSIGNMENT

DRAFT

EXHIBIT C

SCHEDULE OF PERMITTED ENCUMBRANCES

DRAFT

SOLAR LOAN AGREEMENT

THIS SOLAR LOAN AGREEMENT (“Agreement”), dated as of _____, **2013** is made and entered into by and between Public Service Electric and Gas Company, a New Jersey corporation (“Lender”), having its general offices at 80 Park Plaza, Newark, NJ 07102, and _____ (“Borrower”), having its principal place of business at _____. From time to time throughout this Agreement, each of Borrower and Lender is referred to as, individually, a “Party” and collectively, the “Parties.”

RECITALS

A. The State of New Jersey’s Renewable Portfolio Standards (“RPS”) mandate that all electricity suppliers provide a percentage of their electricity sales from solar generation. To meet this requirement, the New Jersey Board of Public Utilities (the “BPU”), through its Office of Clean Energy, established a program for the use and trading of Solar Renewable Energy Certificates (“SRECs”). The SRECs are tracked using the Generation Attribute Tracking System (“GATS”) operated by PJM-Environmental Information Services or any successor entity (the “SREC Program Administrator”). An SREC represents one megawatt hour of solar electricity production. The New Jersey Clean Energy Program (“NJCEP”) allows for SRECs to be created, verified, tracked, sold to, and eventually retired by, electricity suppliers to meet their RPS solar requirement.

B. To assist the State in achieving its environmental objectives under the New Jersey RPS and New Jersey’s Energy Master Plan, Lender has developed a solar loan program (“Program”) through which Lender will provide long term financing for solar-powered generation projects located within Lender’s electric distribution service territory. The BPU approved the Program in its Order dated May 31, 2013 in Docket No. EO12080726 (the “2013 Order”).

C. Borrower submitted a loan application (the “Program Application”) to Lender for term financing for a solar generation project (“Project”) to be constructed at the facility (the “Facility”) located in the Municipality of _____, County of _____, inscribed on the tax map therefor as Lot _____, Block _____, and located at the street address known as _____, **NJ.**

D. Lender has agreed to provide Borrower with term financing, and Borrower accepts such financing in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

1. Definitions. As used herein, unless the context clearly requires otherwise, the following terms shall have the following corresponding meanings:

“2013 Order” has the meaning ascribed to such term in the Recitals.

“90% Amount” has the meaning set forth in Section 2.5(b)(i).

“Actual Loan Balance” means the then-current unpaid principal and unpaid accrued interest under the Loan.

“Actual Payments” has the meaning set forth in Section 2.5(b)(i).

“Administration Fee” means a fee equal to eighty-five dollars (\$85.00) per kW of installed capacity of the Project, which amount shall be paid by Borrower to Lender at the closing of the Loan as a deduction from the Loan proceeds.

“Agreement” has the meaning ascribed to such term in the Preamble.

“Annual True-Up” has the meaning set forth in Section 2.5(b)(i).

“Biennial True-Up” has the meaning set forth in Section 2.5(b)(ii).

“Borrower” has the meaning ascribed to such term in the Preamble.

“Borrower’s SREC Account” has the meaning set forth in Section 2.5(c).

“BPU” has the meaning ascribed to such term in the Recitals.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks in the City of Newark, State of New Jersey are required or permitted by law to close.

“Collateral” means: (a) the Project SRECs arising throughout the term of this Agreement by means of Borrower’s continued and ongoing operation of the Project, and all related rights to said SRECs, including any other Environmental Attributes arising from and/or out of the Project; (b) the Project Equipment; (c) the Project Documents; (d) any other assets or property in which Lender is granted a security interest, lien or pledge as security for the Obligations; and (e) all accessions, additions, substitutions, products and Proceeds to and of the foregoing.

“Commercial Operation” means the Project (a) is operating as intended and generating electricity for use at the Facility, and (b) meets all technical, financial and performance requirements specified in the Construction Agreement and the Power Purchase Agreement, if any.

“Construction Agreement” means the agreement between Borrower and one or more contractor(s) pursuant to which the Project was constructed.

“Contract Year” means: (a) in the event execution of this Agreement occurs on the first day of a calendar month, the twelve-month period commencing on the date of execution of this Agreement and ending on the last day of the twelfth month thereafter; or (b) in the event execution of this Agreement occurs on a day other than the first day of a calendar month, the twelve-month period commencing on the first day of the month following execution of this Agreement and ending on the last day of the twelfth month thereafter, provided that in such event the first Contract Year of this Agreement shall be a period in excess of twelve months as such first Contract Year shall commence on the date of execution of this Agreement rather than the first day of the next succeeding month. By way of example, if this Agreement were to be executed on April 7, 2012, the first Contract Year would commence on April 7, 2012 and conclude on April 30, 2013, and the second Contract Year would commence on May 1, 2013 and conclude on April 30, 2014, continuing thereafter accordingly.

“Environmental Attribute” has the meaning set forth in Section 6(b).

“Equipment” or “Project Equipment” means all of Borrower’s now owned and hereafter acquired rights, title, and interests in and to any and all solar panels and Project-related equipment, machinery, components, wiring, meters, replacement parts and consumables comprising the Project.

“Events of Default” has the meanings set forth in Section 11.1.

“Facility” has the meaning ascribed to such term in the Recitals.

“Floor Price” means [_____] dollars (\$000.00) per Project SREC.

“kW” means kilowatt, as measured in direct current.

“Lender” has the meaning ascribed to such term in the Preamble.

“Lender’s SREC Account” means the Lender’s SREC account with the SREC Program Administrator.

“Liens” means any and all mortgages, liens, charges, security interests and/or encumbrances of any kind, or pledges or deposits of any nature.

“Loan” has the meaning set forth in Section 2.1.

“Loan Amortization Schedule” means the amortization schedule attached to the Note.

“Loan Documents” means this Agreement, the Note, the Security Agreement and such other documents, instruments and certificates delivered in connection with one or more of the foregoing.

“Market Price” means the most recent clearing price for SRECs of the same

vintage as the Project SRECs, which clearing price is obtained from the SREC auction periodically conducted in accordance with the BPU Order dated November 7, 2008, in Docket Number EO07040278 or any subsequent BPU order (the “SREC Auction”). If there is no SREC Auction clearing price for the Project SRECs of a particular vintage, then the Market Price for the Project SRECs will be the auction clearing price for SRECs of the most recent vintage. For example, if there has been no previous SREC Auction clearing price for a 2016 vintage SREC, the Market Price for such SREC will be the most recent auction clearing price for a 2015 vintage SREC. If the SREC Auction is discontinued and the BPU does not approve an alternative SREC sales process, or if the Market Price cannot otherwise be determined from the SREC Auction, then the Market Price will be determined by Lender in a commercially reasonable manner.

“NJCEP” means the BPU’s New Jersey Clean Energy Program, or any successor program thereto.

“Note” has the meaning set forth in Section 2.2.

“Obligations” means any and all obligations, liabilities, covenants and agreements of Borrower under the Loan Documents, and any and all costs and expenses of, or incurred by, Lender in collecting any of the foregoing and in enforcing the provisions of this Agreement, including all court costs and/or reasonable attorneys’ fees and expenses in any action between Lender and Borrower and/or Lender and any third party based on the Loan Documents.

“Operations and Maintenance Agreement” means the agreement between Borrower and a contractor for the operations and maintenance of the Project.

“Owner” means the owner(s) of 100% of the equity of Borrower.

“Permitted Encumbrances” means Liens on the Collateral (a) disclosed by Borrower to Lender and set forth in Exhibit A attached hereto, and (b) Liens in favor of Lender.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether national, federal, state, county, city, municipal, or otherwise), including any instrumentality, division, agency, body or department thereof.

“Power Purchase Agreement” means the agreement related to the sale of electricity produced by the Project from Borrower to an end-user.

“Proceeds” means any and all consideration received from the sale, exchange, collection or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property which constitutes Collateral, and shall include all cash and negotiable instruments received or held on behalf of Lender relating to the payment of accounts and any and all property of whatever nature received and/or held by Borrower or on behalf of Lender.

“Project” has the meaning ascribed to such term in the Recitals.

“Project Documents” means collectively: (a) the Power Purchase Agreement (if any); (b) the Site Agreement (if any); (c) the Construction Agreement; (d) the Operations and Maintenance Agreement; (e) lien waivers executed by every supplier, vendor or contractor performing work or providing services or equipment to the Project; (f) lien waivers and subordination agreements executed by Borrower’s other lienholders, mortgagees and landlord, if applicable; (g) any and all applicable permits, licenses, easements, variances and other authorizations; (h) Program Application documents, project plans and pro formas, and other Program-related documents; (i) warranties from Equipment manufacturers or contractors; and (j) any and all other appropriate documents as may be requested by Lender.

“Project SRECs” means the SRECs created by the Project.

“Proposed Transferee” has the meaning set forth in Section 16.2.

“Quarter” or “Quarterly” means a quarterly period measured based on Contract Years.

“Quarterly Amortization Statement” has the meaning set forth in Section 2.5(a).

“Repayment Election” has the meaning set forth in Section 2.5(c).

“RPS” has the meaning ascribed to such term in the Recitals.

“Scheduled Loan Balance” has the meaning set forth in Section 2.5(b)(ii).

“Security Agreement” means that certain Security Agreement, dated concurrently herewith, setting forth the terms, conditions, obligations and rights of the Parties as to the Collateral.

“Site Agreement” means the lease, license, easement or other agreement of any kind which gives Borrower the right to locate the Project at the Facility.

“SRECs” has the meaning ascribed to such term in the Recitals.

“SREC Processing Fee” means an annual fee to be paid by Borrower to Lender in an amount which shall initially be ten and 18/100 dollars (\$10.18) per Project SREC and then adjusted annually as part of the Annual True-Up and Biennial True-Up provided for herein pursuant to the 2013 Order.

“SREC Program Administrator” has the meaning ascribed to such term in the Recitals or any successor to the SREC Program Administrator recognized by the State of New Jersey.

“Term” has the meaning set forth in Section 2.4.

2. Loan; General Terms.

2.1. Loan Agreement. Subject to the terms and conditions of this Agreement, and the satisfaction of all requirements set forth in this Agreement, Lender agrees to make available to Borrower for the sole purpose of reimbursing a portion of the costs incurred in engineering, procuring, installing and constructing the Project, and Borrower accepts for such sole purpose under the terms of this Agreement, the amount of **AMOUNT and 00/100 DOLLARS (\$)**, which amount is hereafter referred to as the “Loan.” At the closing of the Loan, the Administration Fee shall be deducted from the Loan and retained by Lender.

2.2. Promissory Note. The Loan shall be evidenced by a secured promissory note (“Note”) made by Borrower and delivered to Lender concurrently with the execution of this Agreement.

2.3. Interest Rate. The Loan shall bear interest at the rate of **11.179%** per year, or at a daily rate of .0306% (calculated as $11.179\% \div 365$) (the “Interest Rate”). Interest shall be calculated daily and compounded monthly based on the average daily outstanding loan balance (excluding the current month’s accrued interest) *multiplied by* the daily interest rate *multiplied by* the number of days in such month. Regardless of whether paid in cash or Project SRECs as provided hereunder, without limiting any of Lender’s rights hereunder, to the extent that the interest component of any periodic payment is not paid on the payment due date indicated on the Loan Amortization Schedule, the unpaid portion of such interest component shall bear interest at the stated rate. To the extent this occurs, the effective rate of interest on the Loan will be higher than 11.179% per year.

2.4. Term. This Agreement shall have a term of ten (10) years from the date hereof (the “Term”). Borrower may prepay the Loan prior to the end of the Term in accordance with the provisions of Section 2.6.

2.5 Repayment of Loan.

(a) The full amount of the Loan, and all interest due thereon, is payable in periodic installments as set forth in the Note. All amounts due under this Agreement and the Note can be paid in (i) cash or (ii) the value of the Project SRECs. Following each Quarter, Lender will provide an amortization statement to Borrower showing the amount paid by Borrower in cash and Project SRECs, the current balance of the Loan and the expected balance according to the Loan amortization statement (“Quarterly Amortization Statement”).

(b) Repayment with SRECs. Except as provided in Section 2.5(c), the Loan and accrued interest shall be repaid with Project SRECs, which will be valued at the greater of the Floor Price or the Market Price. At the closing of the Loan and for the duration of the Term, Borrower shall execute such documents as are necessary to assign to Lender all of the Project SRECs until the Loan is repaid in full. Borrower shall have a continuing obligation to execute such documents as may be necessary to authorize the SREC Program Administrator to

automatically transfer Project SRECs to Lender's SREC Account. If the value of the Project SRECs exceeds the amount due from Borrower for a period under the Loan Amortization Schedule, Lender will apply such excess amount to the Actual Loan Balance. The application of such excess shall not reduce the periodic payments under the Loan Amortization Schedule except that upon full payment of all amounts due with respect to the Loan, no further periodic payments thereunder shall be required.

(i) Annual True-Up. Lender will perform a true-up at the end of every Contract Year (the "Annual True-Up"). Lender will calculate (a) the aggregate value of the Project SRECs and cash (excluding any Annual True-Up or Biennial True-Up payments made that Contract Year) received from Borrower to pay the Loan for the Contract Year ("Actual Payments"), and (b) ninety percent (90%) of the total payments due with respect to the Loan for the Contract Year as indicated in the Loan Amortization Schedule (the "90% Amount"). Within thirty (30) days from receipt of notice from Lender, Borrower will pay Lender in cash the SREC Processing Fee and an amount equal to the positive difference, if any, between (x) the 90% Amount *minus* (y) the Actual Payments, and such amount will be applied to the Actual Loan Balance. Overdue payments shall accrue interest at the rate set forth in Section 11.2(h) and, in addition, shall be subject to a late fee equal to one percent (1%) of the Actual Loan Balance.

(ii) Biennial True-Up. In addition to performing the Annual True-Up for each Contract Year, Lender will also perform a biennial true-up, the first to take place at the end of the second Contract Year and then every two Contract Years thereafter (the "Biennial True-Up"). Lender will (a) calculate the Actual Loan Balance at the end of the second Contract Year (after giving effect to any payment required under the Annual True-Up for the current Contract Year) and (b) using the Loan Amortization Schedule, determine the scheduled Loan balance ("Scheduled Loan Balance") for the corresponding period. Within thirty (30) days from receipt of notice from Lender, Borrower will pay in cash to Lender the SREC Processing Fee and an amount equal to the positive difference, if any, between (x) the Actual Loan Balance *minus* (y) the Scheduled Loan Balance, and such amount will be applied to the Actual Loan Balance. Overdue payments shall accrue interest at the rate set forth in Section 11.2(h) and, in addition, shall be subject to a late fee equal to one percent (1%) of the Actual Loan Balance.

(c) Cash Repayment. Borrower may elect to repay the Loan with cash, and must indicate such election in the Loan commitment letter (the "Repayment Election"). The Repayment Election shall be effective for the remainder of the Term unless Borrower submits a revised Repayment Election at least ninety (90) days prior to the end of a Contract Year. Borrower shall not revise its Repayment Election during the Contract Year. If Borrower elects to repay the Loan with cash, Lender will continue to accept delivery of the Project SRECs from the SREC Program Administrator into Lender's SREC account. Lender shall promptly thereafter transfer the Project SRECs to Borrower's SREC account with the SREC Program Administrator

(the “Borrower’s SREC Account”), which Borrower shall establish at Borrower’s sole cost and expense. Borrower shall pay Lender the SREC Processing Fee for all Project SRECs delivered to Borrower’s SREC Account. Borrower may sell the Project SRECs delivered to Borrower’s SREC Account in accordance with Section 6(a) below.

(d) All payments with respect to the Loan (whether in cash or Project SRECs) will be credited against the Loan on the last day of the month and will be applied first, to the payment of accrued interest, and second, to the repayment of the principal amount of the Loan.

(e) Within thirty (30) days following the expiration of the Term, Borrower will pay to Lender the Actual Loan Balance (if any), including interest accrued after the expiration of the Term, all calculated in accordance with Section 2.3.

2.6. Prepayment of Loan. Borrower may prepay all or a portion of the Actual Loan Balance in cash and/or Project SRECs, and all such Project SRECs will be valued at the Market Price.

2.7. Creation of SRECs. Lender will seek to obtain the generation output data from the Project on a monthly basis and report such data to the SREC Program Administrator, which is responsible for creating the Project SRECs. Consistent with the 2013 Order, if Lender is unable to obtain generation output data from the Project for any reason, no data will be reported to the SREC Program Administrator and SRECs will not be created or credited to the Loan until the generation output data is next obtained and reported to the SREC Program Administrator. Borrower may, at its sole cost and expense, arrange for the installation of additional revenue-grade metering equipment which is capable of measuring the electricity generated from the Project in accordance with the Program requirements. Lender may use the generation output data from such additional metering equipment to report to the SREC Program Administrator. Borrower will cooperate and do all things necessary to ensure that all Project SRECs are credited to Lender in a timely manner.

2.8. Inspections. Upon written notice to Borrower, Lender (or its designee) may inspect the Project to confirm that Borrower is operating and maintaining the Project in accordance with this Agreement. Borrower (i) shall not rely on Lender’s inspection for any purpose and (ii) shall be solely responsible for ensuring that the Project is installed, constructed, operated and maintained in accordance with the Construction Agreement. Lender’s inspection of the Project or the disbursement of a Loan shall not be deemed to constitute Lender’s approval or warranty of the Project, the Equipment or any contractor or vendor and/or its continued operation.

2.9. Regulatory Changes; Acceleration of Loan.

(a) Change in Rate Treatment. The Borrower hereby waives all rights to initiate any proceeding to challenge the regulatory treatment accorded Lender’s recovery of net revenue requirements associated with the Program as approved by the BPU in the 2013 Order. In addition, if any legislative, judicial or governmental entity of competent jurisdiction impairs or disallows the full and timely recovery through the Solar Loan III component of Lender’s

electric RGGI Recovery Charge or a like successor clause or rate mechanism including recovery of net revenue requirements associated with the Program as provided for in the 2013 Order, then, at the option of Lender and upon written notice to Borrower, the outstanding balance of the Loan and any other amounts due Lender under this Agreement shall be determined and such outstanding amount shall become due and payable in cash by Borrower within thirty (30) days of the date of Lender's written notice to Borrower.

(b) Change in Regulation. If the existing New Jersey regulations governing the Program are amended, superseded and/or otherwise no longer in force (a "Regulatory Change"), Lender may accelerate the repayment of the unpaid portion of the Loan and accrued interest unless:

- (i) Borrower continues to operate the Project in accordance with this Agreement;
- (ii) The minimum monetary value of the Project SRECs is the Floor Price, and the terms in this Agreement governing the amortization of the Loan and payment of all accrued interest remain in full force and effect; and
- (iii) The BPU continues to allow Lender to enjoy the comparable treatment, as described more fully in Section 2.9(a) above, with regard to those Projects in operation and creating SRECs after the Regulatory Change as Lender enjoyed prior to the Regulatory Change.

3. No Assumption of Liabilities. Lender shall not assume any liabilities and obligations of Borrower of any kind or nature whatsoever, including any liabilities and obligations of Borrower under any of the Project Documents.

4. Conditions Precedent to Advancing the Loan. Lender shall not be obligated to advance the Loan unless the following conditions are satisfied, in form and substance satisfactory to Lender and its counsel, on or prior to the closing of the Loan:

(a) All of the Loan Documents shall have been completed, duly executed and delivered by Borrower to Lender.

(b) Lender shall have received: (i) record searches identifying all financing statements, judgments, tax liens and other Liens on file with respect to Borrower in all jurisdictions (state and county) as Lender may deem appropriate, indicating that no Person, other than Lender and any other holders of Permitted Encumbrances, has any Lien on any of the Collateral; (ii) record owner and mortgage lien searches of the real estate records applicable to the Facility; (iii) duly executed Lien waivers or subordinations from contractors, vendors, lienholders, mortgagees, property owners, tenants, and such other persons or entities as Lender shall determine, which shall be in full force and effect, and in form and substance satisfactory to Lender; (iv) satisfactory evidence of all insurance coverage required in this Agreement; and (v) any and all other documents related to the Collateral or Borrower that Lender reasonably requests.

(c) Lender shall have received the Power Purchase Agreement, the Site Agreement, the Operations and Maintenance Agreement, and such additional Project Documents as Lender may request, each of which shall be in full force and effect, and in form and substance satisfactory to Lender.

(d) Borrower shall have notified Lender in writing that the Project is substantially complete and meets all technical and performance requirements associated with its intended use.

(e) Lender shall have received a field inspection report confirming that the Project has achieved Commercial Operation and is capable of producing SRECs.

(f) Metering equipment capable of measuring the electricity generated from the Project shall have been installed in accordance with the Program requirements.

(g) If Borrower is repaying the Loan with cash, Borrower shall have opened a SREC Account and provided Lender with a corresponding, valid SREC Account tracking number and password.

(h) If Borrower is repaying the Loan with Project SRECs, Borrower shall have assigned to Lender all rights to receive the Project SRECs.

(i) Borrower shall have certified to Lender that Borrower has neither applied for nor received any rebate under the BPU's CORE Program.

(j) There is no: (i) injunction, writ, preliminary restraining order, or any order of any nature issued by an arbitrator, court or other governmental authority directing that the transactions provided for herein and/or in the Project Documents not be consummated; or (ii) suit, litigation, investigation hearing or proceedings of or before any arbitrator, court or other governmental authority pending or threatened against Borrower or any of its properties, revenues or assets and/or the purchaser under the Power Purchase Agreement, with respect to this Agreement, the Security Agreement, the Note, the Project Documents, and/or any of the transactions contemplated hereby or thereby that could result in a material and adverse change thereto.

(k) No Event of Default under any agreement applicable to Borrower has occurred and is continuing or will result from the execution of this Agreement.

(l) The representations and warranties of Borrower contained in this Agreement shall be true and correct as of the date of the closing of the Loan.

(m) The Program, or any direct successor program thereto, remains in effect.

(n) No event shall have occurred since the date of the execution and delivery of the Program Application which, in the good faith opinion of Lender, is likely to materially and adversely affect the financial and/or credit prospects of Borrower, the operability of the Project

as contemplated or otherwise impair the ability of Borrower to perform its obligations under this Agreement, the Security Agreement, the Note, the Project Documents and/or other Loan Documents.

5. Security Agreement. As security for the payment and performance of the obligations of Borrower hereunder, the Note and the Loan Documents, Borrower, concurrently with its execution of this Agreement, will execute and deliver to Lender a fully executed Security Agreement.

6. SRECs and Environmental Attributes.

(a) A Borrower that has elected to repay the Loan in cash pursuant to Section 2.5(c) may resell the Project SRECs to a third party so long as Borrower first notifies Lender in writing of the sale price and quantity of Project SRECs to be sold. Within thirty (30) days after the consummation of the sale, Borrower must pay to Lender the entire sale proceeds (less reasonable broker commission) for use towards (i) the payment of all accrued interest on the Loan, then (ii) the amortization of the principal amount of the Loan in the month Borrower receives the sale proceeds.

(b) For purposes of this Agreement, an “Environmental Attribute” is an instrument used to represent the environmental costs and/or benefits associated with a fixed amount of electricity generation from the Project, which may include any successor to an SREC. For the Project, Environmental Attributes represent the general environmental benefits of renewable generation such as, for example, and not by means of exclusion, air pollution avoidance. The exact quantity of the environmental benefit (*e.g.*, pounds of emission reductions of a given pollutant) is not indicated by an environmental attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not a trading market for such pollutants or benefits exists. Borrower hereby assigns all Environmental Attributes to Lender. Lender will use commercially reasonable methods to monetize such Environmental Attributes and use the proceeds to repay the Loan.

7. Representations and Warranties of Borrower.

7.1. Organization, Standing and Power. Borrower is a _____ duly organized, validly existing and in good standing under the laws of _____. Borrower has qualified to do business in each and every jurisdiction where the failure of Borrower to so qualify would have a material and adverse impact on Borrower’s ability to perform under this Agreement, the Security Agreement, the Note and/or any other Loan Document. Borrower has all requisite power and authority to own, lease and operate its properties, to carry on its business as now being conducted, to operate the Project substantially as contemplated by the Project Documents, and to execute, deliver and perform this Agreement, the Note, the Loan Documents and all writings relating hereto and thereto. All of Borrower’s federal, state, local and foreign income, profits, franchise, sales, use, occupation, property, excise and other tax returns and tax reports, if any, required to be filed with respect to the business and assets of Borrower have been filed, as of, at a minimum, the date hereof with the appropriate governmental agencies, and all

taxes, governmental charges and assessments due and payable with respect to such returns and reports have been paid.

7.2. Authorization of Borrower. The execution, delivery and performance by Borrower of this Agreement and all other writings relating hereto and thereto have been duly and validly authorized by Borrower. No consent or approval of or notification to any party, other than any consent or approval that has been obtained, is required in connection with the execution, delivery and performance by Borrower of this Agreement, the Security Agreement, the Note, the other Loan Documents and/or any writing relating hereto and thereto or the consummation of the transactions contemplated hereby or thereby.

7.3. Litigation Claims and Proceedings. No litigation, suits, claims, or judicial or administrative proceedings of any nature are pending or, to the best knowledge of Borrower, threatened against Borrower, Borrower's property or the Project, the effects of which would have a material adverse effect on Borrower, its business, its financial condition and/or the Project.

7.4. Liens or Encumbrances on Collateral. Borrower represents that there are no liens on the Collateral other than the Permitted Encumbrances.

7.5. Laws and Regulations. Borrower is not in violation of any federal, state or local laws, ordinances or regulations pertaining to this Agreement, the Security Agreement, the Note, any of the Project Documents and/or any of the transactions contemplated in any of the foregoing.

7.6. Non-contravention. The Loan Documents do not violate any agreements to which Borrower is a party or by which Borrower or its assets are bound.

7.7. Disclosures. No representation or warranty by Borrower contained in this Agreement, and no statement contained in any certificate, schedule, exhibit, list or other writing furnished to Lender in connection with this transaction and/or in connection with the Project contains any material untrue statement of fact or omits to state any material fact necessary in order to make the statements contained herein or therein not materially misleading. All copies of all writings furnished to Lender hereunder, or in connection with the transactions contemplated hereby, are true and complete in all material respects. All schedules and exhibits to this Agreement are true and complete in all material respects.

7.8. SRECs. The Project SRECs delivered to Lender hereunder were created in compliance with all applicable laws and are eligible for use in complying with the RPS. Borrower shall promptly notify Lender of any change in circumstance which causes the foregoing representation to no longer be true including providing a copy of any notice received from any governmental authority indicating or determining that the Project SRECs are no longer RPS-eligible. Lender shall not be required to pay down the Loan with Project SRECs that are not RPS-eligible.

8. Representations and Warranties of Lender. As of the date hereof, Lender represents and warrants that Lender is a corporation duly organized, validly existing and in good

standing under the laws of the State of New Jersey and has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

9. Covenants of Borrower.

9.1. Performance of the Project. From and after the date hereof, Borrower shall:

(a) forward to Lender copies of all notices, requests, correspondence and other communications relating to the Project Documents and/or the Project promptly upon receipt thereof;

(b) manage, operate and maintain the Project in compliance with all provisions of the Construction Agreement, the Operations and Maintenance Agreement, the Power Purchase Agreement, the other Project Documents, manufacturer's specifications and with all applicable federal, state and local laws, ordinances and regulations;

(c) maintain and/or cause to be maintained the Project in good operating condition, reasonable wear and tear excepted;

(d) file when and as due all federal, state, local and foreign income, profits, franchise, sales, use, occupation, property, excise and other tax returns and tax reports required to be filed with respect to the business and assets of Borrower with the appropriate governmental agencies, and pay, when and as due, all such taxes to all such appropriate governmental agencies;

(e) advise Lender in writing of any breach or default, or any circumstances that constitute, or with the passage of time will come to constitute, a breach or default under, or in any way impair the validity or enforcement of any obligation or tend to reduce the amount payable from the amount under, any of the Project Documents;

(f) advise Lender in writing of any material and adverse change or any event, occurrence or circumstance that is likely to cause a material and adverse change in the Project and/or the condition, financial or otherwise, business or operations of Borrower;

(g) authorize Lender to access and review Borrower's Project information on record with the SREC Program Administrator; and

(h) at its sole cost and expense: (i) take any and all actions necessary to defend its respective title, rights and interests in and to the Collateral against all Persons and, further, to defend the security interest of Lender in the Collateral and the priority thereof against any Lien that is not a Permitted Encumbrance; and (ii) advise Lender promptly, in reasonable detail, of any Lien made or asserted against any of the Collateral and of the occurrence of any event that may have an adverse effect on the aggregate value of the Collateral and/or on the security interest in the Collateral granted to Lender.

9.2. Conduct of Business. Except as otherwise permitted in this Agreement from and after the date hereof, Borrower shall not:

(a) mortgage, pledge, or otherwise encumber or subject to lien or suffer to be encumbered or subjected to lien, or sell, dispose of, or agree to sell, dispose of or lease or license to others or agree to so lease or license, any of the assets used or useful in the Project, including any real or tangible personal property and, or commit to do any of the foregoing;

(b) cancel or change any material existing policy of insurance relating to the Project, unless, however, replaced by an insurance policy providing substantially the same coverage;

(c) merge or consolidate with any partnership, corporation or other entity of any nature, or change either its name or the address of its principal offices without first giving Lender thirty (30) days' prior written notice of Borrower's intent to do so, or dissolve, liquidate or wind up its affairs, or sell, lease, transfer or otherwise dispose of a significant portion of its assets, or agree to do any of the foregoing; or

(d) sell or relocate the Project Equipment without the prior written consent of Lender.

9.3. Information; Access to Properties; Books and Records.

(a) Borrower shall make available for inspection and copying during normal business hours, as Lender may request and at Lender's expense, promptly and in the form requested, any and all information, including all books and records reasonably requested by Lender. Should Lender, in the course of inspecting any such books and records, discover any material defect therein which amounts to, or reasonably will amount to, an Event of Default under Section 11.1, below, the costs and expenses incurred by Lender in performing such inspection shall be solely borne by Borrower.

(b) Borrower shall afford Lender and Lender's authorized representatives reasonable access to the real and tangible personal property relating to the Project for the purpose of conducting investigations and examinations thereof. No investigation by Lender or any of Lender's representatives pursuant to this section shall affect any representation, warranty and/or covenant of any Party hereto.

9.4. Insurance.

(a) Borrower shall maintain the following minimum insurance coverages on the Project and the Collateral:

(i) Commercial General Liability insurance, for bodily injury and property damage, with limits not less than: FIVE MILLION DOLLARS (\$5,000,000) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) annual aggregate, and naming Lender as an additional insured under such policy;

(ii) All Risk Property insurance covering the replacement cost of the Project and naming Lender as an additional insured and loss payee with respect thereto with a maximum deductible of \$25,000;

(iii) Fidelity/Crime Insurance for limits of at least ONE MILLION DOLLARS (\$1,000,000) per claim; and

(iv) such other insurance as Lender may reasonably require.

(b) The insurance shall be issued by a nationally-known insurance underwriter having an A.M. Best's rating of "A-/VII" or better, or, for underwriters not rated by A.M. Best, a quality equivalent to that of an A.M. Best rating of "A-/VII" or better, as decided by Lender in its sole discretion.

(c) Each policy of insurance shall provide that each insurer will provide Lender with written notice thirty (30) days prior to any termination or modification thereof. If Borrower fails to pay any insurance premium, Lender shall have the right (but shall be under no duty) to pay such premiums, and Borrower shall promptly reimburse Lender all costs and expenses reasonably incurred by Lender, together with interest thereon at the Interest Rate. In the event of an insurable loss with respect to the Project, Borrower hereby authorizes and directs Lender, and Lender shall have the sole discretion, to apply or pay all such Proceeds to (1) the payment of the Obligations, (2) the restoration or replacement of the property destroyed or damaged, or (3) Borrower.

(d) Each such insurance policy set forth above shall include (i) provisions or endorsements naming Lender as an additional insured; (ii) provisions that such insurance is primary insurance with respect to the interest of Lender and that any insurance maintained by Lender is excess and not contributory insurance with the insurance required hereunder; (iii) a cross-liability or severability of insurance interest clause; and (iv) provisions by which the insurer waives all rights of subrogation against Lender.

(e) Borrower shall provide Lender with Certificates of Insurance acceptable to Lender evidencing the policies, provisions and endorsements listed above and, upon request of Lender, on an annual basis thereafter.

9.5. Maintenance of Equipment. Borrower shall cause the Project and all related Equipment to be operated and maintained in accordance with the Project Documents and manufacturer's specifications. Borrower shall ensure that all repairs are timely made so that the value and operating efficiency of the Project is preserved. If Borrower fails to maintain the Equipment as described above, Lender may undertake the maintenance of the Equipment and Borrower shall reimburse Lender upon demand for all of Lender's reasonable incurred costs and expenses plus interest thereon at the Interest Rate.

9.6. Maintenance of Collateral. Borrower will properly maintain the Collateral, defend same against any adverse claims and demands and protect and maintain the

Collateral. Borrower shall use commercially reasonable means to ensure that the Equipment is not affixed to real estate in a manner so as to be deemed a “fixture” as defined under the Uniform Commercial Code.

9.7. No Other Interests Granted. Except for the Permitted Encumbrances, Borrower has not executed, will not execute, and has not had or will have executed on its behalf, any assignment, pledge, security or other similar agreement or financing statement covering the Collateral, or any portion thereof, except to Lender, and Borrower will keep the Collateral free from any and all liens, claims, security interests and encumbrances of any kind or nature, except for the assignment, pledge and security interest granted to Lender under this Agreement and the other Loan Documents.

9.8. Change of Place of Business. Borrower will notify Lender in writing prior to any change in Borrower’s place of business, or, if Borrower has or acquires more than one place of business, prior to any change in either Borrower’s chief executive office and/or the office or offices where Borrower’s books and records are kept.

9.9. Change in Name. Borrower will notify Lender immediately in writing of any proposed or actual change of Borrower’s name, identity and/or corporate structure.

9.10. Further Assurances. Borrower agrees that, at any time and from time to time after the date hereof, upon the request of Lender, Borrower shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered on its behalf, all such further acts, deeds, assignments, conveyances, transfers, powers of attorney or assurances as may be reasonably required in order to give effect to the intent of this Agreement.

10. Covenants of Borrower and Lender. Borrower and Lender shall cooperate and use all reasonable efforts, in good faith, to make all registrations, filings and applications and to give all notices and obtain all governmental and regulatory consents, authorizations, approvals, licenses, permits, orders, qualifications and waivers necessary or desirable for the consummation of the transactions contemplated hereby.

11. Events of Default; Remedies; Cure Rights.

11.1. Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default”:

(a) any failure of Borrower to make any payment of principal or interest as provided in the Note and/or hereunder;

(b) any material representation or warranty made by Borrower herein, or any material statement, information or certification made or provided by Borrower to Lender in connection with this Agreement, the Note and/or the Project, shall prove to have been false or incorrect in any material respect at the time made or given;

(c) an assignment by Borrower of this Agreement or any rights created hereunder in violation of the provisions hereof;

(d) the failure by Borrower to (i) perform or observe any of the material covenants, agreements, terms, conditions or provisions of this Agreement not otherwise specified in this section or to (ii) provide adequate assurance of future performance;

(e) Borrower (i) makes an application for the appointment of a receiver, trustee or custodian for the Collateral and/or any other of Borrower's assets; (ii) files a petition under any chapter of the Bankruptcy Code or any similar federal and/or state law or regulation providing for the relief of debtors; (iii) makes an assignment for the benefit of its creditors; (iv) has a petition in bankruptcy, or other similar relief, filed against it, and such petition is not withdrawn or discharged within ninety (90) days after the date of its filing; or (v) institutes any proceeding or action for the dissolution, liquidation, or termination of Borrower;

(f) Borrower fails to pay, when due, any amount required to be paid to Lender;

(g) Borrower commits an Event of Default under the Security Agreement;

(h) an Event of Default, as such term is defined in any of the Project Documents, occurs;

(i) Borrower breaches and/or defaults under any agreement between Borrower and Lender; and/or

(j) Borrower defaults under any of its obligations to a lienholder with respect to any Permitted Encumbrance.

11.2. Cure Rights; Remedies.

(a) Upon the occurrence of an Event of Default, Lender shall provide written notice of such Event of Default to Borrower, and following receipt of such notice, Borrower shall have two (2) Business Days to fully cure any Event of Default involving the payment of money. For all other Events of Default (except for a default described in Section 11.1(e) above), Borrower shall have thirty (30) days to cure or initiate a cure of the default, provided, however, that Lender shall have the right to terminate the cure period at any time after the thirty (30) day cure period if Lender's rights with respect to the Loan Documents, the Borrower or the Collateral will be materially adversely affected, as determined by Lender in its sole discretion. There shall be no cure rights for a default described in Section 11.1(e) above.

(b) If an Event of Default is not timely cured, Lender, in its sole discretion, may declare the entire outstanding amount of the Loan and all accrued and unpaid interest thereon to be immediately due and payable.

(c) Upon an Event of Default, Lender shall have the right to exercise, at its option, any and all rights and remedies available at law and/or in equity and/or other proceeding. If such Event of Default involves the payment of any amount due under this Agreement, such amount shall bear interest from the date due to the date paid at a rate equal to the interest rate stated in Section 11.2(h), calculated in conformance with Section 2.3.

(d) Upon the occurrence and during the continuance of any condition that, after notice or lapse of time or both, would constitute an Event of Default, Lender shall have the right, as the true and lawful agent of Borrower, with power of substitution for Borrower and in either Borrower's name, Lender's name or otherwise, for the use and benefit of Lender: (i) to offset any amounts owed by Borrower to Lender, which are not paid when due, against any amounts due and owing by Lender to Borrower from any source whatsoever; (ii) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (iii) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any part of the Collateral; (iv) to commence and prosecute any and all suits, actions or proceedings at law or in equity or otherwise in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (v) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating or pertaining to all or any portion of the Collateral; and (vi) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though Lender were the absolute owner of the Collateral for all purposes;

(e) If, in the good faith judgment of Lender, Borrower fails to perform any material obligation hereunder, *i.e.*, if Borrower fails to procure insurance, Lender may take steps, at the sole cost and expense of Borrower, to remedy such failure so as to avoid an Event of Default. Lender shall not be obligated to take any such steps.

(f) Borrower shall reimburse Lender promptly for all reasonable attorneys' fees, costs and expenses Lender incurs in exercising any and all of its remedies hereunder including the costs and expenses incurred by Lender in inspecting Borrower's books and records, as per Section 9.3(a), plus interest on the amount of such costs and expenses from the date incurred by Lender to the date reimbursed by Borrower, calculated in accordance with Section 2.3, and Lender shall be entitled to offset such amounts against payment of any amounts owed to Borrower from any source whatsoever.

(g) Upon the occurrence of an Event of Default, Lender may institute a suit directly against Borrower without first foreclosing on or liquidating the Collateral.

(h) Upon the occurrence of an Event of Default, Lender, in its sole discretion, may increase the rate of interest accruing on the Loan and payable hereunder to the rate of ONE AND ONE-HALF PERCENT (1.5%) per month, calculated in accordance with Section 2.3, for each month after the Event of Default that the Loan remains outstanding.

(i) In the event of a failure of the foregoing remedies, Lender may enter into the Facility where the Collateral may be located, take possession of said Collateral and restore the Facility with respect thereto, the costs of which shall be recouped by Lender as set forth in Section 11.4, paragraph "First".

(j) Lender shall be entitled to recover its reasonable costs and expenses including reasonable attorneys' fees in any legal or equitable action resulting from an Event of Default hereunder.

11.3. Lender's Right to Dispose of Collateral. Consistent with applicable law, Lender shall have the right to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as Lender shall deem appropriate. Lender shall be authorized at any such sale to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale Lender shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Borrower, and Borrower hereby waives to the fullest extent permitted by law, all rights of redemption, stay and appraisal which Borrower now has, or may have at any time in the future, under any rule of law or statute now existing or hereafter enacted.

11.4. Application of Proceeds. Lender shall apply any Collateral consisting of cash and Proceeds:

FIRST, to the payment of all costs and expenses incurred by Lender in connection with such collection or sale, or otherwise in connection with this Agreement or any other agreement in connection with the Loan, including all court costs and reasonable attorneys' fees, costs, disbursements and other charges of its agents and legal counsel, whether incurred in any action or proceeding either between the Parties or between Lender and any third party;

SECOND, to the payment in full of the accrued interest on the Loan;

THIRD, to the payment of the principal of the Loan; and

FOURTH, to Borrower and its successors or assigns, or as a court or agency of competent jurisdiction may otherwise direct.

Lender shall have absolute discretion as to the time of application of any such Proceeds, moneys or balances in accordance with this Agreement. Upon any sale of the Collateral by Lender (by power of sale granted by statute, judicial proceeding or otherwise), the receipt of Lender or of the officer making the sale shall be a sufficient discharge to the purchaser of the Collateral and such purchaser shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication thereof.

11.5 Lender Appointed Attorney-in-Fact. Upon Borrower's receipt of written notice of an Event of Default pursuant to Section 11.2, Lender is automatically appointed

without any further action by Borrower to act as attorney-in-fact on behalf of Borrower for the purposes of carrying out the provisions of this Agreement and taking any action and executing any instrument or other writing which lender may deem reasonably necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest.

12. Amendment and Waivers.

12.1. Amendments, Modifications and Supplements. This Agreement may be amended, modified or supplemented only by an instrument in writing executed by, and delivered on behalf of, each of the Parties.

12.2. Waivers. The representations, warranties, covenants and conditions set forth in this Agreement may be waived only by a written instrument executed by the party so waiving. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition, or breach of any term, covenant, agreement, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of any other condition or of the breach of any other term, covenant, agreement, representation or warranty contained in this Agreement.

13. Survival of Representations, Warranties and Covenants. All representations, warranties and covenants of the Parties contained in this Agreement and/or the Note and/or made pursuant hereto or thereto shall survive until this Agreement expires or is sooner terminated or, in the case of any covenants, until such covenants have been performed fully.

14. Indemnification. Borrower indemnifies and holds harmless Lender and Lender's shareholders, subsidiaries, affiliates, officers, directors, successors and assigns, and the agents, representatives and employees of any and all of the foregoing, from and against any and all liability (including liability in tort, whether absolute or otherwise), obligations, losses, penalties, claims, suits, costs and disbursements, including legal fees and disbursements in any way relating to, or arising out of, the Loan Documents, the Project Documents and/or the Collateral; provided, however, that there shall be no indemnity for liability caused by Lender's gross negligence or willful misconduct. This provision shall survive the expiration or sooner termination of this Agreement.

15. Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally by courier, or by overnight delivery by a nationally recognized overnight delivery service, or five (5) days after mailing if sent by registered or certified mail, postage prepaid, addressed as follows:

If to Lender: Public Service Electric and Gas Company
80 Park Plaza, T-8
Newark, NJ 07102
Attention: Solar Loan Program Administrator

with a copy to Lender's legal counsel at the same address.

If to Borrower:

Attention:

Any party may change the address to which notices or other communications are to be sent to it by giving written notice of such change in the manner provided herein.

16. Assignment.

16.1 This Agreement may not be assigned by any Party without the prior written consent of the other Party. The non-assigning Party shall be entitled to recover its reasonable costs and expenses including administration and attorneys' fees in connection with any such assignment. Notwithstanding the foregoing, however, Lender, without Borrower's consent, may: (a) assign its rights and delegate its obligations hereunder to one or more subsidiaries or affiliates of Lender; or (b) assign its rights to receive moneys and/or SRECs hereunder and under the Note to any unaffiliated third party for financing purposes, provided that no such assignment or delegation shall relieve Lender of its obligations hereunder. Subject to the foregoing, this Agreement shall bind and inure to the benefit only of the Parties and their respective successors and permitted assigns.

16.2 If Borrower desires to sell or transfer its interest in the Project or Facility to a third party (the "Proposed Transferee"), the Actual Loan Balance shall be paid in full at the closing of such transaction. Notwithstanding the foregoing, if the Proposed Transferee desires to assume the Loan, Borrower shall so notify Lender in writing at least ninety (90) days prior to such transfer. Lender shall review the creditworthiness of the Proposed Transferee, the status of the Loan, the operating history of the Project and such other factors as Lender may deem reasonable and appropriate in determining whether to consent to the assignment of the Loan. Lender shall thereafter advise Borrower in writing (i) whether the Loan may be assigned to the Proposed Transferee and (ii) the terms and conditions of the assignment. If Lender does not affirmatively approve the assignment of the Loan to the Proposed Transferee or if the Proposed Transferee fails to satisfy the terms and conditions of any approved assignment by the closing of the transaction between Borrower and the Proposed Transferee, Borrower shall pay in full the Actual Loan Balance at such closing. Lender shall be entitled to recover its reasonable costs and expenses including administration and attorneys' fees in connection with such assignment.

17. Entire Agreement. This Agreement, together with the schedules and exhibits hereto and the Note and the other documents and instruments referred to herein and/or therein, sets forth the entire agreement and understanding of the Parties in respect of the transactions hereby contemplated, and supersedes all prior agreement, arrangements and understandings relating to the subject matter hereof.

18. No Third Party Beneficiary. Nothing in this Agreement is intended or shall be construed to give any person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, other than the Parties.

19. Recitals. The clauses set forth in the Recitals are herein incorporated by reference as though herein set forth at length.

20. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall be considered to constitute one instrument.

21. Section Headings. All section headings are inserted for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement and have no independent significance.

22. Interpretation. In this Agreement the singular includes the plural and the plural the singular; words importing any gender include the other genders; the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, without prejudice to any provisions of this Agreement prohibiting such amendments and other modifications; and references to persons include their respective permitted successors and assigns.

23. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

24. Applicable Law. **THIS AGREEMENT IS GOVERNED EXCLUSIVELY BY AND CONSTRUED IN STRICT ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN THE STATE OF NEW JERSEY WITHOUT REGARD TO NEW JERSEY'S CONFLICT OF LAWS PROVISIONS THAT MAY DEFEAT THE APPLICATION OF NEW JERSEY'S SUBSTANTIVE LAW TO THIS AGREEMENT, THE NOTE AND THE UNDERLYING TRANSACTIONS.**

25. Miscellaneous. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of Lender's system or any portion thereof to Borrower or to the public, nor affect the status of Lender as an independent public utility corporation, or Borrower as an independent individual or entity. Lender's review or acceptance of the Project and its operation shall not be construed as confirming or endorsing the design or as any warranty of safety, durability, reliability and/or performance. Lender shall not by reason of such review or failure to review be responsible for the strength, safety, details of design, adequacy, capacity, reliability and/or operation of the Project, nor shall Lender's extension of the Loan to Borrower be deemed to be an endorsement of the Project, in whole or in part.

26. Relationship of the Parties. For purposes of this Agreement, Lender and Borrower expressly agree that the relationship of Lender to Borrower is that of a lender only.

The intent of this provision is to clarify and stipulate that Lender is not a partner, fiduciary and/or coventurer of Borrower and that Lender's sole interest in the Collateral is for the purpose of security for repayment of the obligations of Borrower to Lender and of Grantor to Secured Party under the Security Agreement.

27. Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by law, any right it may have to a trial by jury in respect of any litigation or other action directly or indirectly arising out of, under or in connection with this Agreement.

[signatures appear on the following pages]

DRAFT

IN WITNESS WHEREOF, each Party has caused its duly authorized representative to execute and deliver this Agreement as of the date first above written.

[Borrower]

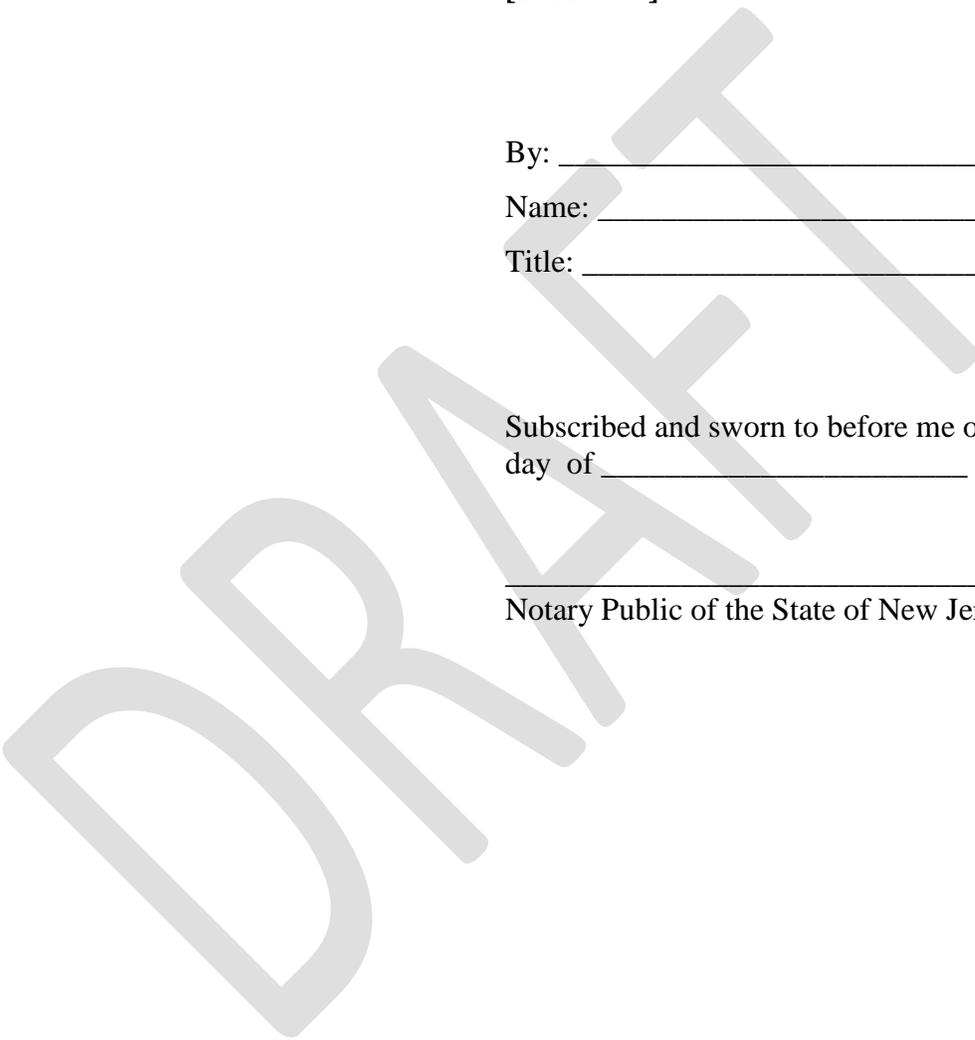
By: _____

Name: _____

Title: _____

Subscribed and sworn to before me on this ____ day of _____, 201__.

Notary Public of the State of New Jersey



Public Service Electric and Gas Company

By: _____

Name: _____

Title: _____

EXHIBIT A

SCHEDULE OF PERMITTED ENCUMBRANCES

PSE&G Solar 4 All Extension

**Project Award Selection Policy and
Procedures Manual**

Version 1.0

July 1, 2013

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Landfills / Brownfields Segment

1. Objective

Install solar generating facilities on landfill and brownfield sites in PSE&G's electric service territory in support of the New Jersey Energy Master Plan.

2. Program Requirements

- A. The Landfill Segment is open to owners of properly closed landfill and/or remediated brownfield sites within PSE&G's electric service territory.
- B. The site must qualify as a landfill / brownfield site per NJDEP and/or EPA.
- C. The project must be capable of connecting into PSE&G's electric distribution system (grid-tied).
- D. The site can house a solar facility greater than 1 MW-dc per program rules.
- E. The site must satisfy the requirements of subsection (t) of the Solar Act of 2012 and, if a landfill, be properly closed.
- F. All contracted work will be subject to the provisions of the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. or the equivalent of the prevailing wage for the county where the work is performed.

3. Landfill / Brownfield Project Identification and Selection Process

Attachment 1 provides a process flow diagram illustrating the project identification and selection process. The process is also described below.

A. Site Identification

PSE&G will identify landfill / brownfield sites by:

- i. Utilizing publicly available information;
- ii. Soliciting landfill / brownfield owners to present their sites for participation in the program, and;
- iii. Issuing a Request for Proposals ("RFP") to landfill / brownfield owners already aligned with a solar Engineering, Procurement, and Construction ("EPC") contractor to submit a turnkey solar project for consideration ("Turnkey Projects"). The site owner will be required to submit a fully engineered, ready to build turnkey solar project for consideration. The RFP will contain the program requirements and specify the information required by participants when responding to the RFP.

B. Site Selection

PSE&G will review and score every landfill / brownfield site identified in Section 3A. A third party environmental engineering firm will score a site's suitability for constructing and housing a solar facility. The environmental engineering firm will review and score the sites based upon the criteria contained in Attachment 2. Each evaluation criterion will be weighted, and all sites will be scored on a scale from 1 to 10 for each specific criterion (10 being the most favorable), which will result in each site receiving an overall score for ranking purposes. This scoring methodology is designed to ensure the least complex and therefore most cost effective sites will be developed first.

Additionally, if the site owner is a governmental entity, e.g. county or municipal authority, the site owner must provide:

- i. A description of the Governmental Entity's process for approving a 20 year lease.
- ii. Identification of all restrictions or limitations on the ability of the Governmental Entity to enter into a 20 year lease. Restrictions might include a requirement for a competitive bidding process prior to entering into a lease (see, e.g., N.J.S.A. §18A:20-8.2).

Note that the Program Requirements must be satisfied for a proposal to be considered for evaluation.

4. Solar EPC Contractor and Turnkey Project Selection

The following describes the process for selecting EPC contractors and/or turnkey proposals from among the sites identified and prioritized through the Landfill & Brownfield Project Selection Process (Section 3).

A. Site-Owner's Competitive Solicitation (if required)

If the identified site is a governmental entity that has identified a requirement for a competitive bidding process prior to entering into a lease (see Section 3B), the entity must issue a competitive solicitation to which PSE&G will respond with a proposed lease payment. If PSE&G is the successful bidder, PSE&G will proceed with the EPC Contractor and Turnkey Project Selection process.

B. PSE&G Identified Sites

This section applies to sites that were either identified by PSE&G or presented to PSE&G (as described in Sections 3Ai and ii above).

EPC Contractor Selection

- PSE&G will develop sites that have the highest ranking as defined in Section 3B and Attachment 2. PSE&G, with the assistance of a third

party environmental engineering firm, will perform further due diligence on the site to determine the size of the solar facility, the interconnecting circuit capability, and the permits necessary to construct the solar facility.

- PSE&G will prepare and issue an RFP for each site for EPC contractor selection. The EPC contractors will be selected through a competitive procurement process thus ensuring projects are cost effective.
- EPC contractors' proposals will be reviewed utilizing the Bid Evaluation & Selection Methodology procedure, Attachment 3.
- PSE&G reserves the right to reject any and all proposals and to modify the size of the project(s), if necessary, to fit within the bounds of the segment.

Agreements - PSE&G will negotiate all agreements for the construction of the project and leasing agreement with the landowner.

Project Award Selection Assessment and Evaluation - PSE&G will submit to Board Staff and Rate Counsel the final assessment and evaluation, including the estimated cost, and general and specific contract conditions for the project. If, after 10 business days, there is no action taken by Board Staff or Rate Counsel, the executed agreement with the EPC contractor will be deemed effective.

C. Turnkey Project Sites

This section applies to sites that were identified through the Turnkey Project RFP (as described in Sections 3Aiii above).

In addition to the Program Requirements, Turnkey Project proposals must meet the following requirements. Proposals that do not meet these requirements will be rejected.

- Has the site owner/EPC Contractor received PJM interconnection approval, obtained circuit capacity and interconnection cost information?
- Has the site owner/EPC Contractor performed the necessary due diligence and engineering to make the determination the site is suitable for a solar facility per subsection (t) of the Solar Act of 2012? PSE&G's environmental engineering firm must confirm and agree with the due diligence performed by the EPC Contractor.
- Has the site owner/EPC Contractor identified all permits required to construct and interconnect the solar facility to the electric distribution system?

Proposals that meet the above criteria will be further reviewed and screened based on the criteria described in Attachment 4. Proposals that are complete and satisfy the technical and commercial requirements of Attachment 4 will be reviewed by an independent third party, hired by PSE&G and familiar with

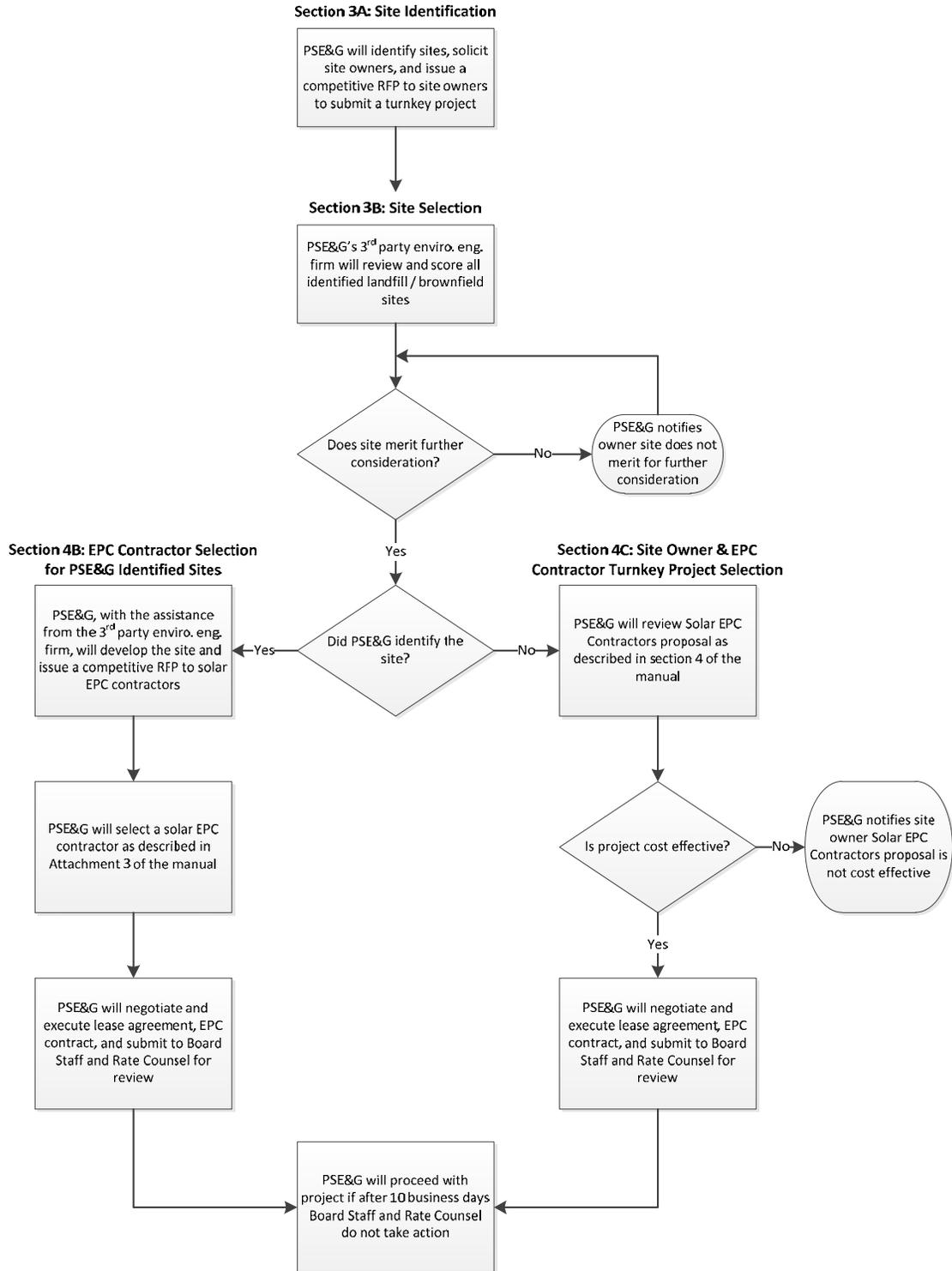
NJ's solar market, to advise as to the cost effectiveness of the proposal. The consultant shall provide a cost analysis of the project and those projects that are deemed cost effective will move forward.

PSE&G reserves the right to reject any and all proposals and to modify the size of the project(s), if necessary, to fit within the bounds of the segment.

Agreements - PSE&G will negotiate all agreements for the construction of the project and leasing agreement with the landowner.

Project Award Selection Assessment and Evaluation - PSE&G will submit to Board Staff and Rate Counsel the final assessment and evaluation, including the estimated cost, and general and specific contract conditions for the project. If, after 10 business days, there is no action taken by Board Staff or Rate Counsel, the executed agreement with the EPC contractor will be deemed effective.

Attachment 1 Landfill / Brownfield Project Identification and Selection Process Flow



ATTACHMENT 2
CRITERIA FOR LANDFILL/BROWNFIELDS SITE SELECTION
RANKING METHODOLOGY AND JUSTIFICATION DESCRIPTIONS

The purpose of this evaluation sheet is to identify and screen registered landfill/brownfields sites located in the PSE&G electric service territory which may be suitable for a solar facility. The criteria and scoring system have been assembled to validate site redevelopment potential. Below is a description of the rationale for selecting these criteria.		
I.	GENERAL SITE CHARACTERISTICS	Provides reviewer an overview of site characteristics including ownership, their eagerness to redevelop the site, and the number of PRPs that are instituting the remedy.
A	Slope of land < 6 degrees	If slope of the site is greater than 6 degrees (~10%grade), solar PV may not be viable. Low-slope sites are ideal for PV systems.
B	Significant shading of the site	PV arrays are sited to receive minimal shading for the majority of the day.
C	Existing obstacles on the site	Large growth vegetation, erosion, landfill cap integrity.
D	Site free of land use exclusions or restrictions to preclude the use of PV	Excluded due to environmentally sensitive areas or preservations areas (e.g., wetlands and wilderness preservations areas, airports, federal lands etc.)
E	Community vision for reuse or Redevelopment Plan for the site	PV evaluated as a potential element of future redevelopment plan.
F	Lien or Bankruptcy Status	Liens or bankruptcy issues with site can increase redevelopment costs, complicate financial transactions, and discourage developers.
G	Distance to transmission and/or distribution lines less than ½ mile	To minimize interconnection cost and environmental and cultural impacts. Assume criteria met if in a dense urban setting.
H	Orientation	Provides the preferred degree of solar system orientation.
II.	SITE OWNERSHIP AND SYSTEM TYPE	This category addresses some of the major real estate considerations including zoning, easements, and utilities.
A	Site owner investing in, selling or leasing, enabling development of PV	Determine role of the owner and interest in siting a PV system. Identify restrictions precluding a long-term lease.
B	Ground-Mounted PV system	Siting on a landfill or brownfield site with useable acreage
C	Ground-Mounted on a landfill	Remediation and installation considerations vary for landfill applications.
D	Ground-Mounted on a Brownfield site	Contaminated site may require additional design, construction, and maintenance considerations.
III.	LANDFILL CONSIDERATIONS	Candidate landfills selected based on status (active, closed, timing of closure require special design considerations).
A	Landfill Closed or Active	Install PV in buffer zones on site and consider integrating PV system into closure plan.
B	Landfill lined and capped	Determine overall construction. Ascertain whether landfill was active prior to 1970.
C	Institutional controls limit redevelopment	Evaluation of the nature of the cap and components with respect to installation of PV system on the cap.
D	PV system compatible with existing closure plan	Evaluate options to add PV system as part of the design
E	Landfill Settlement	Settlement predictions will need to be adjusted to account for effects on settlement rate or pattern due to the PV system. Evaluate landfill design, age, and waste composition.

F	PV installation impacts to existing erosion control, storm water management, and vegetative cover	A careful review of storm water management plan has been incorporated into the post-closure plan to prevent erosion and fissures in the landfill cap.
G	Piping and Collection system weight bearing capacity	Determine additional loading from a PV system will not exceed the bearing capacity of leachate and landfill gas collection systems.
H	PV system compatible with OM&M of leachate and landfill gas collection system	Ensure there are no physical interferences, and proper clearances are maintained for the Operations, Maintenance, and Monitoring systems.
I	PV installation requires modifications to drainage patterns or impact storm water management plan.	Evaluate storm water management system.
IV.	BROWNFIELD SITES AND PROJECT READINESS	The status of site characterization (including regulatory acceptance) can have a large impact on a project redevelopment schedule.
A	Status of site PA/SI/RI	Completion of site assessments allows a developer to understand contamination at the site and how to incorporate a site reuse which addresses risks caused by the contamination.
B	Disputes between regulators and PRPs over RI or remediation	A spirit of cooperation between PRPs and regulators will typically benefit a project both in terms of schedule and decision making flexibility.
C	Will remediation activities potentially impact useable acreage	The remediation activities scheduled for the site will need to be assessed against the proposed usable acreage for the installation of the PV system
D	Is contamination at site limited to soil?	Soil contamination can usually be addressed prior and even during site redevelopment while groundwater concerns or sediment contamination issues can take several years to resolve and may require continued access onto the property.
E	Timeframe to receive a "NFA" designation	Shorter timeframes to achieve a No Further Action designation may make a site more attractive for redevelopment.
V.	OTHER ENVIRONMENTAL AND HISTORICAL	Other environmental factors that can affect land use include the proximity of a site to a floodplain or the presence of wetlands.
A	Will a floodplain or wetland restrict development?	New Jersey has strict regulations pertaining to the development of sites within a floodplain of a river, including the amount of fill material that can be used onsite and the percentage of impervious cover. The presence of wetlands onsite can affect land-use. While some wetlands can be filled and their loss mitigated, other wetland impacts may not be permitted by regulatory agencies.
B	Forested impacts	The preferred sites are those for which such uses are minimal or non-existent.
C	Does site owner, developer, or lessees meet requirements for liability protections under CERCLA/RCRA through EPA?	Obtain a final determination with regard to liability in coordination with the appropriate EPA office.
VI.	COMMUNITY / INFRASTRUCTURE CONSIDERATIONS	A community's support for a redevelopment project can provide significant benefits to both the host township and the developer.
A	Is the community or governing body in favor of redevelopment?	Enthusiasm for a proposed project can provide momentum, expedite decision-making, and minimize controversy.
B	Is the site located within an Environmental Justice Community?	A project within an environmental justice community may have greater political support and may be eligible for redevelopment funding.
C	Compatible and alternative land uses	Is there competing land use potential from agricultural, recreational, and affordable housing.
D	Avoidance/minimization prime farmland impacts	Potential to displace other valuable farm land.

E	Permitting and existing zoning requirements	Issues related to existing zoning or permit requirements. Zoning variances needed.
F	Community boundary issues from abutting or nearby communities	Will PV system have any adverse impact on neighboring municipalities?
G	Highway access	Allows for quick access onto major metropolitan highway corridors such as 1-95, I-80, or the Garden State Parkway and New Jersey Turnpike.
VII.	FINANCIAL SCREENING	Addresses the economic, policy, and incentive factors that influence the siting, construction, installation, and operation of a PV system.
A	Load assessment	Is there an on-site load that can use a substantial portion or all of the electricity generated based on the estimated system size.
B	PV system capacity	Given the shape of the site, provide high level assessment of array location, assuming appropriate inter-array distances for shading, and determine capacity.
C	System production	System production will use PV watts as an estimator tool, and account for tilt, orientation, location, and de-rate factor including losses due to interconnection distances.
D	Estimated installation cost per watt	Analyze costs in three distinct areas: System cost, interconnection cost, and site preparation costs
E	Eligibility for BPU-DEP Landfill/Brownfield incentive	BPU proceeding underway to determine criteria for eligibility, and mechanism for incentive.
F	Bonus energy and /or capacity value	The location energy value and capacity will be assessed on a site by site basis. Certain sites, especially in PSE&G North, will have greater value.
G	Timing	Overall timing to get site control, PJM Interconnection and DEP approval
H	Proximity to contiguous load	Previous PSE&G Solar-For-All projects have been wholesale, non-net metered projects. The State favors net metered projects. The State may be inclined to favor brownfield/landfill projects contiguous to load that can be net metered. Assistance to PSE&G to present BPU with these types of opportunities can be discussed with PSE&G.

ATTACHMENT 3
EPC Contractor Solicitation for PSE&G Identified Sites
Bid Evaluation & Selection Methodology

General

PSE&G will issue a solar solicitation, including a detailed scope of work, to solar Engineering, Procurement, and Construction (“EPC”) firms to competitively bid each solar project.

Solar solicitations will be open to all solar EPC firms and will be managed through PSE&G’s PowerAdvocate software platform. PowerAdvocate will ensure bids are confidential, competitive, and cost effective. PowerAdvocate provides an open and transparent bidding process to all participants.

Part 1: Initial Screen

The purpose of the initial screen is to rank proposals on a set of criteria and narrow the field of prospective EPC firms to a manageable level so an in-depth review of these proposals may be performed. Proposals that are not complete will be disqualified. In addition, only experienced EPC firms with a minimum of five (5) years solar construction experience and a minimum of twenty (20) MW-dc of installed solar capacity will be considered. The initial screen ranks proposals on the following weighted criteria:

1. Price (40%)
2. Experience (24%)
3. Quality of Proposal (15%)
4. NJ Content (10%)
5. Safety (10%)
6. Preferred EPC firm by site owner (1%); if owner does not have a preferred EPC firm, the 1% will be applied to experience category

Price:

EPC proposed price (\$) per watt and price (\$) per KWH are compared to the best price provided in each solicitation. The proposal with the lowest price per watt and KWH will receive a score of 0.5 for each, for a total score of 1. All other proposals are compared to the best price per watt and KWH for each solicitation.

Experience:

An EPC firm’s solar experience will be evaluated on a scale of 0 to 1 considering the i) total capacity of solar installed, ii) years of solar experience, iii) landfill/brownfield solar experience, iv) project sizes (MW-dc), and v) PSE&G or affiliate experience.

Each qualifying factor above will score 0.2 provided the following is satisfied:

- EPC firm with > 30 MW-dc of solar capacity installed will receive a score of 0.2
- EPC firm with > 7 years of experience will receive a score of 0.2

- EPC firm that has constructed or is constructing on a landfill / brownfield will receive a score of 0.2
- EPC firm with an individual project > 3 MW-dc will receive a score of 0.2
- EPC firm that has worked successfully with PSE&G or affiliate will receive a score of 0.2

Quality of Proposal:

Proposals are reviewed to determine the EPC firm did provide information in conformance to the bid. Factors considered are: i) did EPC firm provide a schedule, ii) did EPC firm provide an electrical one-line and layout drawing of the solar facility, iii) did EPC firm provide project team members, and iv) overall quality of proposal.

Each factor will score of 0.25 based on the following:

- EPC firms that provide a schedule in line with scope will receive a score of 0.25, proposals without a schedule meeting the scope will receive a score of zero.
- EPC firms that provide an electrical one-line and layout drawing per the scope will receive a score of 0.25; proposal without an electrical one-line / layout drawing per the scope will receive a score of zero.
- EPC firms that specify project team members will receive a score of 0.25, proposals without project team listed will receive a score of zero.
- EPC firms that provide a thoughtful proposal and demonstrate thorough understanding of the work will receive a score of 0.25, proposals that lack thoughtfulness and are not thorough will receive a score of zero.

Safety:

An EPC firm's safety performance will be evaluated on a scale of 0 to 1 comparing the firm's performance to industry standards. If the EPC firm's OSHA Rate is better than industry standards the firm will receive a score of 0.5 and zero if it is below industry standards. If the EPC firm's Insurance EMR is better than industry standards than the firm will receive a score of 0.5 and zero if it is below industry standards. If the EPC firm's safety performance is poor they may be disqualified from the bidding process.

New Jersey Content:

EPC Firm's will be asked to provide the percentage of New Jersey Content to be utilized in the project. NJ Content will be scored on a scale of 0 to 1 considering three (3) categories: (i) headquarter location, (ii) labor, and (iii) material source. If an EPC Firm is headquartered in NJ the firm will receive a score of 0.7, a zero if it is headquartered outside the state. If NJ labor to be utilized is greater than 20% the EPC firm will receive a score of 0.15, a zero if it is less than 20%. If the EPC firm will source greater than 5% of the material in total project cost from NJ the EPC firm will receive a score of 0.15, a zero if it is less than 5%.

Preferred Site Owner EPC Firm:

The solar EPC firm provides a professional comfort level to the landfill / brownfield owner. For example, the landowner has already worked with the EPC firm to develop

a solar project and is confident the EPC firm will not compromise environmental conditions of the site. EPC firms will receive a score of 1 if they are chosen as a preferred EPC firm by the landfill / brownfield owner.

The six (6) weighted criterion are added and the EPC firms with the highest scores move onto the next screening level for an in-depth review of their proposals.

Prior to the launch of a new solar solicitation, to ensure cost effectiveness, the evaluation team may review and adjust criteria as appropriate, and the basis of the adjustment will be documented. The evaluation team during the initial screening may include PSE&G Procurement, Solar 4 All (“S4A”) team, and Delivery, Projects, and Construction (“DP&C”) team members.

Part 2: Bid Tab Evaluation

The top EPC firms will be reviewed considering the pricing, technical, and commercial attributes of their proposal in accordance with PSE&G’s Procurement Bid Tab Evaluation. The evaluation team during this phase of the selection process may include the following PSE&G departments: Procurement, S4A, DP&C, Legal, and Risk Management. The EPC firm receiving the top score will be recommended for award.

Categories	Category Weight	Description of Categories
Pricing	50%	Total Evaluated Price
		Sub-Total Pricing Category
Technical	35%	Technical Approach
		Safety / Procedure Compliance
		Sub-Total Technical Category
Commercial	15%	Company Profile
		Project Commercial
		Sub-Total Commercial Category
Pricing, Technical, & Commercial	100%	Total Pricing, Technical, & Commercial Combined Scores

ATTACHMENT 4
Additional Selection Criteria for Turnkey Proposals

I.	Technical Attributes of Proposal
A	Does the project schedule fall within the timeframe of the program?
B	Does the EPC Contractor’s proposal meet the technical requirements of the bid as determined by environmental engineering firm and PSE&G?
C	Does the EPC Contractor have exceptions and deviations to the technical requirements of the contract that are deemed unacceptable?
D	Does the EPC Contractor have experience constructing grid tied solar facilities greater than 3 MW in size?
E	Does the EPC Contractor have experience constructing solar facilities on Landfills / Brownfields?
F	What is the EPC Contractor’s safety records and performance?
G	New Jersey content based on factors considered in Attachment 2.
H	Does the EPC Contractor have experience working with PSE&G or its affiliates?
II.	Commercial Attributes of Proposal
A	Does the EPC Contractor have exceptions and deviations to contract terms and conditions?
B	EPC Contractor's financial health

Underutilized Governmental Facilities Segment

1. Objective

The typical application of solar generation for governmental facilities is a net metered project on either a rooftop or ground mounted. The purpose of this segment is to identify additional opportunities for governmental entities to benefit from solar, through PSE&G's lease payments over the 20 year term of the project, utilizing properties or facilities that are otherwise not suitable for net metering.

2. Program Requirements

- A. The pilot is open to all governmental entities including State entities, school districts, public colleges, counties, county agencies, county authorities, municipalities, municipal agencies and municipal authorities (each, a "Governmental Entity").
- B. All projects must be located within PSE&G's electric service territory.
- C. The minimum project size is 100 kW and the maximum project size is 1,000 kW.
- D. A project is defined as Solar PV installed and interconnected at a single interconnection point with PSE&G's distribution system.
- E. All projects will be grid-connected and be owned and operated by PSE&G.
- F. All projects must satisfy PSE&G's interconnection requirements.
- G. Any project that would be required to be certified under subsection (t) of the Solar Act of 2012 is not eligible.
- H. Any project that is proposed to be located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964" P.L.1964, c.48(C.54:4-23.1 et seq.) at any time within the last 10 year period prior to the effective date of the NJ Solar Act of 2012 is not eligible.
- I. All contracted work will be subject to the provisions of the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. or the equivalent of the prevailing wage for the county where the work is performed.

- 3. Request for Proposals** – PSE&G will initially issue a request for proposals (RFP) which will be open to any Governmental Entity described above. This RFP will contain the program requirements, specify the information required by participants when responding to the RFP, and will include, but not be limited to, the following:

Information Required by Applicants (the following minimum information will be required of applicants):

- A. A description of the proposed property or facility including a description of past, current and future uses of the property or facility, i.e., why and how is it underutilized;

- B. An estimate of the size of the space available;
- C. An estimate of the kW-dc of solar capacity that can be installed under this proposal;
- D. A description of the proposed solar array(s), including conceptual layout and technical specifications or requirements;
- E. If the property or facility has any load, 12 months of billing history and/or PSE&G account number and meter number;
- F. An explanation why the property or facility is not suitable for net metering. If a building is located on the same property as that proposed for the solar array(s), the description should include why the building cannot be net metered effectively (examples: potential solar kW on building vs. proposed area for solar; cost to interconnect solar array to building);
- G. Location of proposed utility interconnection point, including distance from proposed solar system(s);
- H. Identification and description of any pre-existing site conditions including, but not limited to, environmental and subsurface conditions; and
- I. Identification of any restrictions on use of the property, such as easements.
- J. Description of the Governmental Entity's process for approving a 20 year lease.
- K. Identification of all restrictions or limitations on the ability of the Governmental Entity to enter into a 20 year lease. Restrictions might include a requirement for a competitive bidding process prior to entering into a lease (*see, e.g., N.J.S.A. §18A:20-8.2*).

4. Site/Concept Selection Methodology

PSE&G will review the responses to the RFP and evaluate them based upon the Concept and Site Selection criteria. This process will result in each proposed project receiving an overall score which will be utilized in ranking and prioritizing proposals. The proposals receiving the highest overall score will be considered for Contractor Selection (the next step in the process). Note that the Program Requirements must be satisfied for a proposal to be considered for evaluation.

Specific criteria related to Concept and Site Selection is included in Attachment 1.

If a high-scoring proposal has identified a requirement for a competitive bidding process prior to entering into a lease (See Section 3K), the Governmental Entity must issue a competitive solicitation to which PSE&G will respond with a proposed lease payment. If the PSE&G is the successful bidder to this solicitation, the PSE&G will proceed with the EPC Contractor Selection Process (see Section 5).

PSE&G reserves the right to reject any and all proposals and to modify the size of the project(s), if necessary, to fit within the bounds of the segment.

5. **Contractor Selection** – PSE&G will utilize the EPC solicitation process as specified in the Landfill Segment Project Award Selection Policies and Procedures Manual. The EPC contractors will be selected through a competitive procurement process thus ensuring projects are cost effective.

6. **Project Award Selection Assessment and Evaluation** - PSE&G will submit to Board Staff and Rate Counsel the final assessment and evaluation, including the estimated cost and general and specific contract conditions, for the project. If, after 10 days, there is no objection, PSE&G's executed agreement with the EPC contractor will be deemed effective.

**ATTACHMENT 1
CRITERIA FOR CONCEPT AND SITE SELECTION**

The purpose of this evaluation sheet is to identify and screen potential Grid Security projects located in the PSE&G electric service territory. The criteria and scoring system have been assembled to validate site development potential. Below is a description of the selection criteria and the rationale for favorable scoring.		
I.	General site characteristics	
A	Slope of the land & orientation of available space	Favors land with minimal slope, and/or slope in south/west orientation
B	Degree of shading on the site	Favors no shading
C	Size of the space available for solar PV	Favors maximum available space
D	Existence of obstacles on the site or site conditions that would increase the cost of solar PV – due to the need for site preparation or infrastructure to enable a solar investment at a particular site	Favors sites with minimal obstacles and need for increase site preparation or infrastructure
E	Degree of land-use exclusions, restrictions, conditions to preclude the use of PV – including easements, environmental and subsurface conditions, zoning restrictions	Favors sites with least restrictions, and absence of environmental and subsurface restrictions
F	Community/agency vision for re-use or redevelopment plan for the site	Favors strong community and/or agency support
G	Orientation of the available space	Favors S/W orientation for optimal solar design
H	Readiness of access to the site/panels for Maintenance	Favors site(s) with least restrictive access
II.	Technical characteristics	
A	Distance to appropriate/required PSE&G infrastructure to support project	Favors shortest distance
B	Estimated amount of solar capacity (kW-dc) that can be installed for the proposed project	Favors larger system that can be installed at interconnection point
C	Degree to which the proposal has specific technical requirements – and consistency of the same with PSE&G practices	Favors proposal with least specific solar PV technical requirement (ie. favors flexibility)
D	Degree (and ease) of maintenance for the proposed project	Favors ease of maintenance
III.	Other	
A	Time frame for which proposed project can proceed/commence	Favors proposal that can commence soonest
B	Degree to which similar projects are known to exist in PSE&G service territory	Favors proposals with fewest known similar projects
C	Degree to which proposed solar configuration would require investment over a 'standard' ground mount system (e.g., excessive ballasting required? raised arrays requiring support structure and footings?)	Favors projects that require least incremental investment over standard
D	Degree to which proposed application can be replicated on other sites (i.e. degree to which the application is site-specific)	Favors ability to replicate
E	Lease Approval Process	Favors most simple, least restrictive lease approval process.

Innovative Parking Lot Applications Segment

1. Objective

Solar generation in a parking lot environment is generally more expensive than other types of installations because of the additional structural material required for the canopies. The purpose of this segment is to identify and demonstrate innovative applications of solar generation in parking lot environments that reduce the overall cost of such applications and make parking lot applications more cost competitive with other solar applications. In order to be considered an innovative application a project may contain at least one additional revenue source beyond energy, capacity and SRECs that has the net effect of reducing the overall cost, or it may contain technology that provides a higher solar yield (kWh/kW installed) than the typical solar facility installed in a parking area.

2. Program Requirements

- A. All projects must be located within PSE&G's electric service territory.
- B. The minimum project size is 100 kW-dc and the maximum project size is 1,000 kW-dc.
- C. A project is defined as Solar PV installed and interconnected at a single interconnection point with PSE&G's distribution system.
- D. All projects will be grid-connected and owned and operated by PSE&G.
- E. Any additional revenue-generating sources and related appurtenances that are submitted for consideration and ultimately selected will be owned, operated, maintained, repaired and/or replaced by the developer/contractor or their designee for the life of the program. All revenues to PSE&G should be predictable and measureable since they will be returned to ratepayers. The latter will be factors utilized to screen applicants, together with the magnitude of the revenue sources.
- F. Any and all electrical energy used to energize and power proposed revenue sources must be provided for independent of/separate from the power output (or supply) of the Solar PV system (or accounted for in the revenue payment provided to PSE&G for the revenue source, at PSE&G's discretion).
- G. Any project that would be required to be certified under subsection (t) of the Solar Act of 2012 is not eligible.
- H. Any project that is proposed to be located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964" P.L.1964, c.48(C.54:4-23.1 et seq.) at any time within the last 10 year period prior to the effective date of the NJ Solar Act of 2012 is not eligible.

- I. All contracted work will be subject to the provisions of the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. or the equivalent of the prevailing wage for the county where the work is performed.

3. Request for Qualification

PSE&G will initially issue a request for qualifications (RFQ) which will establish the program requirements, and prequalify applicants. The qualification round is open to developers, contractors, potential hosts and other interested parties. It is not a requirement of the qualification round that a host be identified, but potential projects that have already identified a host facility that is committed to the project are preferred and will be a consideration in the RFQ review process.

The following minimum information will be required of applicants:

- A. A description of the proposed project.
- B. An estimate of the kW-dc of solar capacity that can be installed under this proposal.
- C. If the applicant is a developer, identify the type of host (retail, school, etc.) they will target.
- D. If the applicant is a host, identify the developer/contractor if known.
- E. A detailed description and discussion of any additional revenue sources including how they will result in a net reduction of the overall cost of solar generation. This description shall also include the following:
 - a. Schematics illustrating how the revenue sources will be integrated into the solar PV design, including identification of power sources and requirements.
 - b. A description of the revenue sources being proposed, including a projection of the revenue associated with the source and dependencies or risks related to the level of revenue (for PSE&G).
- F. A detailed description and discussion of any process, technology or hardware that increase the total yield of the solar system.
- G. A preliminary estimate of installation and O&M costs over the life of the project.
- H. A description of the proposed solar array(s), including conceptual layout and technical specifications or requirements.
- I. Respondents to the RFQ must demonstrate how their proposals satisfy the Program Objectives.

PSE&G will review the projects based on Applicants' responses in relation to the Program Requirements and Program Objectives, and may reject proposed projects

if they fail to meet those requirements and objectives. Proposed projects that are not rejected will be invited to participate in the Solicitation.

4. Request for Proposals

PSE&G will invite the projects identified through the RFQ process to submit proposals using its normal competitive procurement procedures. All submittals must have an identified host and EPC contractor or developer. At a minimum the proposals must include:

- A. The proposed location of the project and name of the host.
- B. A project description, site plan solar array layout, and total installed watts (dc).
- C. The total installed cost of the pilot/demo solar system.
- D. A projection of O&M costs, by component, over the life of the project.
- E. An annual energy output estimate in kWh for the first year using a methodology as may be appropriate and acceptable to PSE&G.
- F. A project schedule.
- G. Location of proposed utility interconnection point, including distance from proposed solar system(s).
- H. Identification and description of any pre-existing site conditions including, but not limited to, environmental and subsurface conditions.
- I. Identification of any restrictions on use of the property, such as easements.
- J. A notarized letter from the host indicating:
 - i. Agreement to participate in the pilot; and
 - ii. Acceptance of the PSE&G Lease Agreement with any exceptions noted.
- K. Evidence that the additional revenue to PSE&G will be realized, including:
 - i. A proposed agreement for leasing space from PSE&G, which must include PSE&G's ability to terminate, without cause, with 90 days' notice; and
 - ii. A projection of the revenue over the life of the project including supporting calculations and analysis.
- L. Description of the Governmental Entity's process for approving a 20 year lease.
- M. Identification of all restrictions or limitations on the ability of the Governmental Entity to enter into a 20 year lease. Restrictions might include a requirement for a competitive bidding process prior to entering into a lease (*see, e.g., N.J.S.A. §18A:20-8.2*).

5. Project Selection Methodology

PSE&G will review the responses to the RFP and evaluate them based upon several attributes of the responses/proposals: Concept and Site Selection; Pricing; Technical; and Commercial. This process will result in each proposed project receiving an overall score (%) which will be utilized in ranking and prioritizing proposals. The proposals receiving the highest overall score will be considered for the award. Price, and specifically cost per Watt, will be considered in this evaluation, thus enabling a measure of cost effectiveness in the process.

Categories	Category Weight	Description of Sub-Categories
Concept & Site Selection	25%	General Site Characteristics
		Technical Characteristics
		Other
Pricing	35%	Total Evaluated Price
Technical	25%	Technical Approach
		Safety / Procedure Compliance
Commercial	15%	Company Profile
		Project Commercial
Concept & Site Selection; Pricing, Technical, & Commercial	100%	Total Combined Scores

Specific criteria related to Concept and Site Selection is included in Attachment 1.

If a high-scoring proposal has identified a requirement for a competitive bidding process prior to entering into a lease (See Section 4M), the site owner must issue a competitive solicitation to which PSE&G will respond with a proposed lease payment. If the PSE&G is the successful bidder to this solicitation, the PSE&G will proceed to the next step in the process (see Section 6).

PSE&G reserves the right to reject any and all proposals and to modify the size of the project(s), if necessary, to fit within the bounds of the segment.

6. Agreements

PSE&G will negotiate the agreements for the construction of the projects and leasing agreements with the hosts.

7. Project Award Selection Assessment and Evaluation

PSE&G will submit to Board Staff and Rate Counsel the final assessment and evaluation, including the estimated cost and general and specific contract conditions, for each of the selected projects. If, after 10 days, there is no objection, the executed agreements between PSE&G, on the one hand, and the contractor and host on the other, shall be deemed effective.

ATTACHMENT 1
CRITERIA FOR CONCEPT AND SITE SELECTION

The purpose of this evaluation sheet is to identify and screen potential Grid Security projects located in the PSE&G electric service territory. The criteria and scoring system have been assembled to validate site development potential. Below is a description of the selection criteria and the rationale for favorable scoring.		
I.	General site characteristics	
A	Slope of the land & orientation of available space	Favors land with minimal slope, and/or slope in south/west orientation
B	Degree of shading on the site	Favors no shading
C	Size of the space available for solar PV	Favors maximum available space
D	Existence of obstacles on the site or site conditions that would increase the cost of Solar PV – due to the need for site preparation or infrastructure to enable a solar investment at a particular site	Favors sites with minimal obstacles and need for increase site preparation or infrastructure
E	Degree of land-use exclusions, restrictions, conditions to preclude the use of PV – including easements, environmental and subsurface conditions, zoning restrictions	Favors sites with least restrictions, and absence of environmental and subsurface restrictions
F	Readiness of access to the site/panels for maintenance	Favors site(s) with least restrictive access
II.	Technical characteristics	
A	Distance to appropriate/required PSE&G infrastructure to support project	Favors shortest distance
B	Amount of solar capacity (kW-dc) that can be installed for the proposed project	Favors larger system that can be installed at interconnection point
C	Degree to which the proposal has specific technical requirements – and consistency of the same with PSE&G practices	Favors proposal with least specific solar PV technical requirement
D	Degree (and ease) of maintenance for the proposed project	Favors ease of maintenance
E	Degree to which proposed project/system produces greater solar yield (kWh/KW-dc) than a fixed a raised solar array	Favors greater solar yield
III.	Other	
A	Time frame for which proposed project can proceed/commence	Favors proposal that can commence soonest
B	Degree to which similar projects are known to exist in PSE&G service territory	Favors proposals with fewest known similar projects
C	Degree to which proposed solar configuration would require investment over a 'standard' raised array (description and photo of 'standard' to be provided by company)	Favors projects that require least incremental investment over standard
D	Degree to which proposed application can be replicated on other sites (i.e. degree to which the application is site-specific).	Favors ability to replicate
E	Amount of predictable and steady (incremental) revenue opportunity contained within the proposal -	Favors higher, predictable and steady revenue stream
F	Lease approval process	Favors most simple, least restrictive lease approval process

Grid Security / Storm Preparedness Segment

1. Objective

The objective of this segment is to develop projects that integrate solar PV with other technologies (including energy storage) and concepts to reduce the impact of solar power integration on the distribution grid, and/or to demonstrate the feasibility of providing enhanced reliability and grid resiliency for customers' facilities during prolonged power outages.

2. Program Requirements

- A. All projects must be located within PSE&G's electric service territory.
- B. The minimum project size is 100 kW-dc and the maximum project size is 1,000 kW-dc.
- C. A project is defined as Solar PV installed and interconnected at a single interconnection point with PSE&G's distribution system.
- D. All projects must satisfy PSE&G's interconnection requirements.
- E. All projects will be grid-connected and be owned and operated by PSE&G.
- F. If an applicant's response includes and/or proposes additional revenue sources to PSE&G, such as PJM frequency regulation credits related to an energy storage proposal, those sources should be predictable and measurable. Predictability and measurability will be factors utilized to screen applicants, together with the magnitude of the revenue sources.
- G. Respondents to the RFP must demonstrate how their proposals satisfy the Program Objectives.
- H. Customer locations that could be deemed "critical" or otherwise benefit the public in the time of storm emergencies will be preferred and considered in the Project Selection process. Critical facilities include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster.
- I. Any project that would be required to be certified under subsection (t) of the Solar Act of 2012 is not eligible.
- J. Any project that is proposed to be located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964" P.L.1964, c.48(C.54:4-23.1 et seq.) at any time within the last 10 year period prior to the effective date of the NJ Solar Act of 2012 is not eligible.

K. All contracted work will be subject to the provisions of the New Jersey State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. or the equivalent of the prevailing wage for the county where the work is performed.

3. **Request for Qualification**

PSE&G will initially issue a request for qualifications (RFQ) which will assess and qualify applicants. The qualification round is open to developers, contractors, potential hosts and other interested parties. It is not a requirement of the qualification round that a host be identified, but potential projects that have already identified a host facility that is committed to the project are preferred and this factor will be a consideration in the RFQ review process.

Information Required of Applicants (the following minimum information will be required of applicants):

- A. A description of the proposed project.
- B. An estimate of the kW-dc of solar capacity that can be installed under this proposal.
- C. If the applicant is a developer, identify the type of host (retail, school, etc.) they will target.
- D. If the applicant is a host, identify the developer/contractor if known.
- E. If applicable, a detailed description and discussion of any additional revenue sources, including a projection of the revenue sources being proposed, and a description of dependencies or risks related to the level of revenue (for PSE&G).
- F. A preliminary estimate of installation and O&M costs over the life of the project.
- G. A description of the proposed solar array(s), including conceptual layout, technical specifications or requirements.
- H. Schematics that detail how the technology (inclusive of solar and/or energy storage) will be integrated and metered as a grid-tied PV system.
- I. Customer locations that could be deemed “critical” or otherwise benefit the public in the time of storm emergencies will be preferred and this factor will be considered in the Project Selection process.
- J. A detailed discussion of how the project will fulfill the objectives of the pilot with special emphasis on storm preparedness.

PSE&G will review the projects based on Applicants’ responses in relation to the Program Requirements and Program Objectives, and may reject proposed projects if they fail to meet those requirements and objectives. Proposed projects that are not rejected will be invited to participate in the Solicitation. Depending on the

types of projects proposed, PSE&G may engage, at its discretion, subject matter experts to assist in project evaluation.

4. **Request for Proposals**

PSE&G will invite the projects identified through the RFQ process to submit proposals using its normal competitive procurement procedures. All submittals must have an identified host and EPC contractor or developer. At a minimum the proposals must include:

- A. The proposed location of the project and name of the host.
- B. A project description, site plan solar array layout, and total installed watts (dc).
- C. A description of the PSE&G customer facility and end-use where the project will be installed.
- D. Schematics that detail how the technology (inclusive of solar and/or energy storage) will be integrated and metered as a grid-tied PV system.
- E. The total installed cost of the pilot/demo solar system.
- F. A projection of O&M costs, by component, over the life of the project.
- G. An annual energy output estimate in kWh for the first year using a methodology that is appropriate and acceptable to PSE&G.
- H. A project schedule.
- I. Location of proposed utility interconnection point, including distance from proposed solar system(s).
- J. Identification and description of any pre-existing site conditions including, but not limited to, environmental and subsurface conditions.
- K. Identification of any restrictions on use of the property, such as easements.
- L. A notarized letter from the host indicating:
- M. Agreement to participate in the pilot; and
- N. Acceptance of the PSE&G Lease Agreement with any exceptions noted.
- O. A description and projection of any potential revenue sources being proposed, aside from energy, capacity and SRECs.
- P. Description of the Governmental Entity's process for approving a 20 year lease.
- Q. Identification of all restrictions or limitations on the ability of the Governmental Entity to enter into a 20 year lease. Restrictions might include a requirement for a competitive bidding process prior to entering into a lease (*see, e.g.*, N.J.S.A. §18A:20-8.2).

5. Project Selection Methodology

PSE&G will review the responses to the RFP and evaluate them based upon several attributes of the responses/proposals: Concept and Site Selection; Pricing; Technical; and Commercial. This process will result in each proposed project receiving an overall score (%) which will be utilized in ranking and prioritizing proposals. The proposal receiving the highest overall score will be considered for the award. Price, and specifically cost per Watt, will be considered in this evaluation, thus enabling a measure of cost effectiveness in the process.

Categories	Category Weight	Description of Sub-Categories
Concept & Site Selection	25%	General Site Characteristics
		Technical Characteristics
		Other
Pricing	35%	Total Evaluated Price
Technical	25%	Technical Approach
		Safety / Procedure Compliance
Commercial	15%	Company Profile
		Project Commercial
Concept & Site Selection; Pricing, Technical, & Commercial	100%	Total Combined Scores

Specific criteria related to Concept and Site Selection is included in Attachment 1.

If this high-scoring proposal has identified a requirement for a competitive bidding process prior to entering into a lease (See Section 4O), the site owner must issue a competitive solicitation to which PSE&G will with a proposed lease payment. If the PSE&G is the successful bidder to this solicitation, the PSE&G will proceed to the next step in the process (see Section 6).

PSE&G reserves the right to reject any and all proposals and to modify the size of the project(s), if necessary, to fit within the bounds of the segment.

6. Agreements

PSE&G will negotiate the agreements for the construction of the projects and leasing agreements with the hosts.

7. Project Award Selection Assessment and Evaluation

PSE&G will submit to Board Staff and Rate Counsel the final assessment and evaluation, including the estimated cost and general and specific contract conditions, for each of the selected projects. If, after 10 days, there is no

objection, the executed agreements between PSE&G, on the one hand, and the contractor and host on the other, shall be deemed effective.

ATTACHMENT 1
CRITERIA FOR CONCEPT AND SITE SELECTION

The purpose of this evaluation sheet is to identify and screen potential Grid Security projects located in the PSE&G electric service territory. The criteria and scoring system have been assembled to validate site development potential. Below is a description of the selection criteria and the rationale for favorable scoring.		
I.	General site characteristics	
A	Slope of the land & orientation of available space	Favors land with minimal slope, and/or slope in South/West orientation
B	Degree of shading on the site	Favors no shading
C	Size of the space available for solar PV	Favors maximum available space
D	Existence of obstacles on the site or site conditions that would increase the cost of solar PV – due to the need for site preparation or infrastructure to enable a solar investment at a particular site	Favors sites with minimal obstacles and need for increase site preparation or infrastructure
E	Degree of land-use exclusions, restrictions, conditions to preclude the use of PV – including easements, environmental and subsurface conditions, zoning restrictions	Favors sites with least restrictions, and absence of environmental and subsurface restrictions
F	Readiness of access to the site/panels for maintenance	Favors site(s) with least restrictive access
II.	Technical characteristics	
A	Distance to appropriate/required PSE&G infrastructure to support project	Favors shortest distance
B	Amount of solar capacity (kW-dc) that can be installed for the proposed project	Favors larger system that can be installed at interconnection point
C	Degree to which the proposal has specific technical requirements – and consistency of the same with PSE&G practices	Favors proposal with least specific solar PV technical requirement
D	Degree (and ease) of maintenance for the proposed project	Favors ease of maintenance
E	Degree to which project enhances the reliability of the customer in the case of a loss of utility power	Favors continuity of service
III.	Other	
A	Time frame for which proposed project can proceed/commence	Favors proposal that can commence soonest
B	Degree to which the project-design and concept can demonstrate reduction of impacts to distribution grid	Favors proposals that can demonstrate same
C	Lease approval process	Favors most simple, least restrictive lease approval process
D	Degree to which proposed application can be replicated on other sites (i.e. degree to which the application is site-specific).	Favors ability to replicate
E	If applicable, amount of predictable and steady (incremental) revenue opportunity contained within the proposal -	Favors higher, predictable and steady revenue stream

Agreements

Landfills / Brownfields Segment

1. Turnkey Lump-Sum Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project
2. Surface Lease Agreement

Underutilized Governmental Facilities Segment

Innovative Parking Lot Segment

Grid Security / Storm Preparedness Segment

The agreements for these three pilot segments will be based on the agreements for the Landfills / Brownfields Segment modified for the particular circumstances of each project.

Draft of July 1, 2013

Contract Id No. MA--_____

PROPRIETARY AND CONFIDENTIAL

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

Dated as of July __, 2013

between

Public Service Electric and Gas Company

and

DRAFT

This Turnkey, Lump-Sum, Engineering, Procurement, and Construction Contract for a Solar Photovoltaic Project (the “EPC Contract”), dated as of July __, 2013, is by and between Public Service Electric and Gas Company, a New Jersey corporation (the “Company” or “PSE&G”), and _____, a _____ (the “EPC Contractor”). The EPC Contractor and PSE&G are sometimes referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, by order dated May 31, 2013, the New Jersey Board of Public Utilities (“NJBP”U”), in Docket Number EO12080721 (the “BPU Order”), authorized the Company to invest funds to construct and own solar electric generating projects located on landfills and brownfields;

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

WHEREAS, the Company desires the EPC Contractor to build the Project on the landfill [*or brownfield*] located in _____ (the “Site”), as further identified in Exhibit F, which is owned by _____ (the “Host”);

WHEREAS, the Company and the Host have entered into a [*optional: are negotiating a*] lease dated as of July __, 2013 (“Lease”) pursuant to which the Company is authorized to construct the Project on the Site; and

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

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

1. **EPC Contract Documents**. This EPC Contract includes the documents listed below, together with any other documents referenced therein, including Exhibits and Attachments, which as a whole, constitute the entire agreement between the Parties, all of which form one integrated agreement and arrangement for the EPC Contract:

- Part I – EPC Contractor’s Scope of Work
- Part II - EPC Contract Terms and Conditions

2. **Order of Precedence**. The Parts and all components of this EPC Contract are to be considered complimentary and what is required by one will be binding as if required by all. If

there is a conflict between Parts I and II of this EPC Contract, the provisions of Part II will govern. In the event of a conflict within either Parts I or II, or within any of the components thereof, the most stringent requirement will take precedence, except as may be otherwise determined by Company.

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

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

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

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

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

8. **Mutual Representations and Warranties.** Each of the EPC Contractor and Company hereby represent and warrant that:

- 8.1. it is duly organized and validly existing in good standing under the laws of its jurisdiction of its organization and is duly qualified and authorized to do business and is in good standing in all other jurisdictions where it is required to be so qualified;
- 8.2. it has the power and authority to (a) own its property and assets and to transact the business in which it is engaged and proposes to engage hereby and (b) execute, deliver and perform this EPC Contract;
- 8.3. it has taken all necessary action to authorize the execution, delivery and performance of this EPC Contract, and it has duly executed and delivered this EPC Contract;
- 8.4. the execution, delivery and performance of this EPC Contract will not (a) contravene any Law, (b) conflict with or result in any breach of any agreement to

which it is a party, or (c) violate any provision of its organizational or formation documents;

- 8.5. no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance of this EPC Contract, other than those that have been duly obtained or made and are in full force and effect;
- 8.6. This EPC Contract constitutes the legal, valid, and binding obligation of each Party, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by equitable principles (regardless of whether enforcement is sought in equity or law);
- 8.7. there is no action, suit or proceeding now pending or (to the best of its knowledge) threatened against it (or any Subcontractor, in the case of the Contractor) before any court, administrative body or arbitral tribunal that could reasonably be expected to adversely affect the ability of such Party (or any Subcontractor, in the case of the Contractor) to perform its obligations hereunder (or under any Subcontract).

9. **Lease Condition Precedent.** *[Use if no Lease is executed at the time of signing the EPC Contract]* Notwithstanding any other provision contained in this EPC Contract, it shall be a condition precedent to the effectiveness of this EPC Contract that the Company shall have executed a satisfactory Lease with the Host. The Company shall promptly advise the EPC Contractor in writing of the execution of such Lease, which is expected to occur on or about [_____], 2013.

10. **BPU Condition Precedent.** Consistent with the NJBPU Order, notwithstanding any other provision contained in this EPC Contract, it shall be a condition precedent to the effectiveness of this EPC Contract that neither the staff of the NJBPU nor the New Jersey Division of Rate Counsel shall have objected to the EPC Contract. The Company shall promptly submit the EPC Contract to NJBPU for review. If no action is taken by the staff of the NJBPU nor the New Jersey Division of Rate Counsel within ten (10) business days, this EPC Contract shall be deemed authorized.

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

[Signature Block on Following Page]

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

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

Signature Page to EPC Contract

PART I

PSE&G Solar 4 All

EPC Contractor's Scope of Work

PART II

EPC CONTRACT TERMS AND CONDITIONS

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- Exhibit A - Change Request
- Exhibit B - Milestone Payment Schedule
- Exhibit C - Payment Application
- Exhibit D - Retainage LC
- Exhibit E - Affidavit of Payment and Final Release
- Exhibit F - Site
- Exhibit G - Performance LC
- Exhibit H - Labor Rates and Unit Pricing
- Exhibit I - Affidavit of Payment and Partial Release of Claims
- Exhibit J - Certificate of Substantial Completion
- Exhibit K - Certificate of Final Acceptance
- Exhibit L - Pass-Through Warranties
- Exhibit M - System Performance Test Procedures
- Exhibit N - Permit Responsibility Matrix

- Exhibit O - Land Use Agreements
- Exhibit P - Workmanship LC
- Exhibit Q - EPC Contractor Insurance
- Exhibit R - Availability Factor Test
- Exhibit S - Key EPC Contractor Personnel

ARTICLE 1. INTENT

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

ARTICLE 2. DEFINITIONS

The following definitions shall apply herein:

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

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

“Availability Factor Test” means the test to be performed by EPC Contractor on the one year anniversary of the Substantial Completion Date in accordance with Exhibit R.

“Certificate of Final Acceptance” means a certificate issued by the EPC Contractor and accepted by the Company in accordance with Article 7, substantially in the form attached hereto as Exhibit K.

“Certificate of Substantial Completion” means a certificate issued by the EPC Contractor and accepted by the Company in accordance with Article 6, substantially in the form attached hereto as Exhibit J.

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

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

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

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

“Change Trigger Event” is (a) a Change in Law, (b) Suspension by Company, (c) Company Directed Change; (d) Termination for Convenience; and (e) the occurrence of a Force Majeure Excused Event. For the avoidance of doubt, the existence of an Unforeseen Site Condition on the Site is not a Change Trigger Event.

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

“Company” is Public Service Electric and Gas Company.

“Company Permit” means each permit Company is required to obtain as set forth in Exhibit N.

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

“Company Directed Change” is defined in Article 30.

“Construction Manager” is defined in the Scope.

“Cure Period” is defined in Article 6.

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

“Delay Liquidated Damages” is defined in Article 8.

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

“Eligible Bank” means any bank or financial institution reasonably acceptable to the Company organized under the laws of the United States with (i) a credit rating of at least (a) "A" by S&P or "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least \$10 billion.

“Emergency Entities” is defined in Article 18.

“Environmental Event” means any event that may have an impact on the environment including a spill, violation of any Permit condition, equipment oil leak, encroachment on wetlands or other protected natural resource.

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

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

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

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

“EPC Contractor Permits” means each permit EPC Contractor is required to obtain as set forth in Exhibit N.

“EPC Contractor Taxes” is defined in Article 59.

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

“Field Incidents” means workplace injuries not requiring first aid or medical care that are documented for record purposes only.

“Final Acceptance” is defined in Article 7.

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

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

“First Aid Incidents” means workplace injuries and illnesses that involve medical care but do not meet OSHA recording criteria.

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

“Governmental Authority” means the governmental and municipal authorities of the United States or any state therein or any department, subdivision (political or otherwise),

municipality, instrumentality, county, agency, corporation or commission under the direct or indirect control thereof.

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

“Guarantees” means the Schedule Guarantee described in Article 8 and the System Performance Guarantees described in Article 9.

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

“Host” is defined in the Recitals.

“Incident” means any Field Incident, First Aid Incident, OSHA Recordable, Environmental Event, near miss, operational incident, unplanned equipment operations, damage to any equipment, equipment failures, or other noteworthy event.

“Insured Parties” is defined in Article 17.

“Key EPC Contractor Personnel” shall have the meaning set forth in Article 24.1.

“Land Use Agreements” means (a) the Lease, (b) any access right or other right to use or traverse real property, and (c) any encumbrance, easement, license, restriction, or limitation of any kind applicable to the Site or used in connection with the construction of the Project.

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

“Lease” shall have the meaning set forth in the Recitals.

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

“Liquidated Damages” are the Performance Liquidated Damages, the Availability Liquidated Damages and the Delay Liquidated Damages.

“Long Lead Time Equipment” means the solar panels, switchgear, transformers, racking, inverters, and power station platforms.

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

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

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

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

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

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

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

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

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

“OSHA” means the Occupational Safety and Health Act of 1970 (29 U.S.C. §651) as amended.

“OSHA Recordable” means any workplace fatality, injury or illness that meets OSHA general or specific recording criteria.

“Payment Application” is set forth in Exhibit C.

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

“Performance Liquidated Damages” are the liquidated damages described in Article 9.

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

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

“Price Change” is the actual, verifiable incremental increase or decrease in costs reasonably and prudently incurred as a direct result of a Change Trigger Event. The EPC Contractor’s compensation for performing the Work as the result of a Change Trigger Event

shall not exceed the EPC Contractor's direct cost plus five percent (5%) to cover indirect costs, fees, overhead, and profit.

"Project Schedule" is defined in the Scope.

"Punch List" means a list of uncompleted Work.

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

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

"Retainage LC" means the irrevocable standby letter of credit in substantially the form of Exhibit D.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Site" has the meaning set forth in the Recitals.

"Scope" is set forth as Part I.

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

"Standard Test Conditions" means the conditions at which the photovoltaic (PV) modules comprising the Project are tested to determine the module nominal power output and performance characteristics. The Standard Test Conditions are defined to be 1000 W/m², a relative air mass of 1.5, and 25°C cell temperature.

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

"Substantial Completion" shall have the meaning ascribed thereto in Article 8.

"Substantial Completion Date" means the date on which Substantial Completion occurs.

"System Performance Guarantees" are defined in Article 9.

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

“Time Change” is the enlargement of time allotted to reach Substantial Completion, which shall be reflected in a change to the Guaranteed Substantial Completion Date, necessitated by a Change Trigger Event that has made the achievement of the Guaranteed Substantial Completion Date impossible. No Time Change shall be granted to the extent of EPC Contractor’s act, omission, negligence, breach of this EPC Contract, or failure to take adequate measures to mitigate or alleviate the impact or effect of such Change Trigger Event. No Time Change shall be in excess of the minimum period necessary to overcome the effects of the Change Trigger Event in question.

“Unforeseen Site Conditions” means any natural or manmade subsurface condition, underground voids, caves or groundwater, Antiquities, flora or fauna protected by Law, or Hazardous Materials on the Site.

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

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

ARTICLE 3. AGREEMENT

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

2. This EPC Contract is divided into articles, sections and paragraphs, which are titled and numbered for convenience only. It is not to be inferred that this is a complete or correct segregation of the several divisions of Work to be performed. The Company shall not be liable for omission or duplication of items of Work by the EPC Contractor or any Subcontractor, as a result of real or alleged error in arrangement of matter in this EPC Contract.

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

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

ARTICLE 4. STANDARDS

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

2. The EPC Contractor shall be responsible for the professional design, engineering, construction and construction management of the Work, and shall provide to Company professional engineering certifications upon request. The omission of design services from the Scope of Work (a) shall not relieve the EPC Contractor from furnishing such design services and (b) shall not constitute a basis for a Change Request or Change Order.

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

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

ARTICLE 5. EPC CONTRACTOR RESPONSIBILITIES

The EPC Contractor shall, at its own expense, do everything necessary to complete the Work including:

1. perform all Work continuously and diligently in accordance with all applicable Law, Permits, existing Site limitations, and the Project Schedule;

2. provide any information that the Company may reasonably request to verify actual progress and predict future progress of the Work;

3. provide specifications, plans, drawings, engineering and design of the Project, which shall be consistent with the design and equipment parameters set forth in this EPC Contract and applicable Law and perform the Work in accordance with such standards, specifications, engineering, design and construction requirements;

4. procure and supply all Materials (unless expressly specified otherwise herein), supplies and services for the Project and the engineering, design, construction, commissioning and testing thereof, all in accordance with this EPC Contract;
5. provide or obtain all utilities necessary for the construction of the Project;
6. deliver to the Company copies of all executed contracts with Subcontractors;
7. deliver to the Company for the Company's approval, at least thirty (30) Days before commissioning occurs, the EPC Contractor's proposed commissioning procedures for the Project;
8. provide all services and Materials for the execution of the Work;
9. provide all construction tools and equipment, other tools, office facilities, telecommunications and other items required to complete the Project and achieve Final Acceptance;
10. clear and inspect the Site, dispose of all debris and fill at its own expense, and construct the Project, including all civil, electrical, mechanical, and controls, works, foundations, and structures;
11. transport to the Site, receive, unload, store and secure at the Site, all Materials and other components of the Work;
12. obtain and maintain all the EPC Contractor Permits;
13. provide all necessary technical support and timely prepare all documentation and the application (including engineering and design information) related to the Work required by the Company in order for the Company to obtain and maintain the Company Permits and the Land Use Agreements consistent with the Project Schedule;
14. provide all other services that are specified in, or may be reasonably inferred from, this EPC Contract;
15. provide to the Company a list of recommended spare parts for the Project;
16. give the Company ten (10) Days' prior written notice before the commencement of the System Performance Test;
17. comply with all applicable interconnection requirements, and the Land Use Agreements;
18. prepare monthly progress reports and present to Company for review and comment;

19. support the Company in providing periodic status updates and reports to Governmental Authorities and third parties as may be required;

20. maintain in good order at the Site all necessary documentation related to the performance of the Work, including at least one (1) record copy of the design and engineering documents, project execution plans, drawings, construction procedures, quality assurance manuals, drawings, specifications, product data, samples, and modifications, marked currently to record changes made during construction, all of which will be available to the Company for inspection and use at all times;

21. promptly notify the Company in writing if the EPC Contractor believes that the Guarantees will not be met, and shall specify in such notice the basis for such belief, and the corrective action to be taken by the EPC Contractor; and

22. If requested by the Company, during start-up and testing prior to final acceptance, EPC Contractor shall maintain qualified personnel to support the operation and maintenance of the Project.

ARTICLE 6. SUBSTANTIAL COMPLETION

1. Substantial Completion shall occur when the Company has confirmed that all of the following conditions have been satisfied or waived in writing by the Company:

- a.** EPC Contractor has installed all equipment in accordance with manufacturers' requirements and the requirements of this EPC Contract and all applicable pass-through warranties, as identified on Exhibit L attached hereto, have been properly assigned and delivered to the Company;
- b.** EPC Contractor has completed all Work necessary to permit safe and reliable generation and transmission of electrical power and in accordance with the Scope of Work and design specifications;
- c.** the Punch List has been agreed upon and accepted in writing by the Company;
- d.** all Work has been completed in accordance with Law, the Land Use Agreements, and all building, electrical and code inspections required by the local electric distribution company or Law have been successfully completed and applicable certifications have been obtained;
- e.** EPC Contractor has delivered the following documents to Company in a format consistent with this EPC Contract: (i) all vendors' and other manufacturers' instructions, tests and certified drawings relating to Materials; (ii) QA/QC and other test and inspection certificates and reports applicable to the Work; (iii) Specifications and Drawings (current as of such time); (iv) construction turnover packages; and (v) Project operating

procedures and manuals, including all applicable system operations and maintenance manuals;

- f.** EPC Contractor has replaced or refilled any consumables and spare parts consumed during commissioning and testing;
- g.** EPC Contractor has successfully completed all activities in the construction and testing phases, as more particularly described in this EPC Contract;
- h.** EPC Contractor has paid in full all Delay Liquidated Damages;
- i.** the Project has successfully passed the System Performance Test;
- j.** the medium voltage infrastructure and the grid connection for the Project are mechanically, electrically and functionally complete, the Project is interconnected with the local electric distribution company, and the Project is operating and producing electricity in a manner consistent with this EPC Contract; and
- k.** the NJBPU or its designee has certified that the Project is qualified to generate SRECs based on the electrical output of the Project.

2. The EPC Contractor shall issue a Certificate of Substantial Completion, substantially in the form of Exhibit J, to the Company including such operating data, documentation, and certifications as necessary to verify that the conditions for Substantial Completion in Section 6.1 have been met. Within thirty (30) Days thereafter, the Company shall either notify the EPC Contractor that Substantial Completion has not occurred (along with the reasons supporting such conclusion) or accept and countersign the Certificate of Substantial Completion.

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

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

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

ARTICLE 7. FINAL ACCEPTANCE

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

- a.** the Company has issued a Certificate of Substantial Completion;
- b.** the Site is free of construction debris;
- c.** all items on the Punch List have been completed;
- d.** no Change Requests are pending;
- e.** EPC Contractor has provided six (6) hard copy sets of the final Project as-built documentation including:
 - *All as-built engineering drawings and specifications
 - *Vendor Drawings and Data
 - *Instruction Manuals
 - *Installation, Operation and Maintenance Manuals
 - *All Permits with copies of close-out records as required
 - *Control system software.
 - *Spare Parts Lists
- f.** EPC Contractor has provided one (1) CD of the electronic as-built documentation, including executable CADD files and “.pdf” versions of all design drawings;
- g.** EPC Contractor has provided six (6) copies of an as-built Site survey documenting the Solar Project as-built conditions in relation to the Site, easement areas and right of way areas;
- h.** EPC Contractor has paid in full all Liquidated Damages due and owing;
- i.** EPC Contractor has delivered to the Company an Affidavit of Payment and Final Release in the form set forth in Exhibit E;
- j.** EPC Contractor has delivered to the Company a release and waiver of Liens from each Subcontractor who performed Work or is otherwise entitled by Law to file a Lien and such other documentation as Company may reasonably request;

- k. EPC Contractor has completed all Work;
- l. EPC Contractor has removed all of its construction equipment, material and support personnel from the Site; and
- m. EPC Contractor has delivered to the Company the Workmanship LC or has escrowed funds in accordance with Article 20.2.

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

3. The EPC Contractor shall issue a Certificate of Final Acceptance, substantially in the form of Exhibit K, to the Company including such operating data, documentation, and certifications as necessary to verify the conditions for Final Acceptance contained in Section 7.1 have been met. Within thirty (30) Days thereafter, the Company shall either notify the EPC Contractor of why Final Acceptance has not occurred (along with the reasons supporting such conclusion) or accept and countersign the Certificate of Final Acceptance. The Final Acceptance Date shall be the first date on which all conditions for Final Acceptance were satisfied.

4. The EPC Contractor shall perform all necessary Work to achieve Final Acceptance, and the foregoing notice procedure shall be repeated until Final Acceptance occurs at which time Company shall issue a Certificate of Final Acceptance.

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

ARTICLE 8. SCHEDULE GUARANTEE

1. Substantial Completion shall occur on or before the date that is 120 Days after the date on which the EPC Contractor has received all Permits necessary to begin construction, which date shall be known as the "Guaranteed Substantial Completion Date." If the Substantial Completion Date does not occur on or before the Guaranteed Substantial Completion Date, then the EPC Contractor shall pay Company liquidated damages in the amount of *[tbd]* per megawatt of system capacity (as measured in alternating current, pro-rated on a kilowatt basis) (the "Delay Liquidated Damages") for each Day following the Guaranteed Substantial Completion Date until the Substantial Completion Date.

2. Company shall issue an invoice to the EPC Contractor for Delay Liquidated Damages and EPC Contractor shall pay any Delay Liquidated Damages no later than ten (10) Days after receipt of the invoice.

3. Company and EPC Contractor acknowledge and agree (a) that Company will suffer significant damages and substantial financial loss if the Project fails to achieve Substantial Completion by the Guaranteed Substantial Completion Date and such damages and financial losses will be difficult to calculate precisely and (b) the Delay Liquidated Damages are fair and reasonable, are not penalties, and reflect the Parties' assessment and estimate of such damages and financial losses. In light of the foregoing and the equal bargaining power of the Parties, the EPC Contractor accepts and agrees to the Liquidated Damages as liquidated damages.

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

ARTICLE 9. SYSTEM PERFORMANCE GUARANTEES

1. As a condition of Substantial Completion, EPC Contractor shall conduct the System Performance Test in accordance with the Scope of Work and Exhibit M. The Project shall achieve an acceptance test performance ratio ("ATPR") of 85.0% or better in order to achieve Substantial Completion.

2. If EPC Contractor fails to meet or exceed the ATPR, EPC Contractor shall pay liquidated damages ("Performance Liquidated Damages") in the amount equal to the guaranteed output of the Project *minus* the actual output, *divided by* the guaranteed output (as measured in alternating current) *multiplied by* EPC Contract Price *multiplied by* two (2).

3. On the one year anniversary of the Substantial Completion Date, the EPC Contractor shall perform the Availability Factor Test for the Project as described in Exhibit R.

4. If EPC Contractor fails to pass the Availability Factor Test, EPC Contractor shall pay liquidated damages ("Availability Liquidated Damages") described in Exhibit R.

5. Company shall issue an invoice to the EPC Contractor for Performance Liquidated Damages and Availability Liquidated Damages, and EPC Contractor shall pay such Liquidated Damages within ten (10) Days after receipt of the invoice.

6. Company and EPC Contractor acknowledge and agree (a) that Company will suffer significant damages and substantial financial loss if the Project fails to pass the Performance Test or Availability Factor Test and such damages and financial losses will be difficult to calculate precisely and (b) the Performance Liquidated Damages and Availability Liquidated Damages are fair and reasonable, are not penalties, and reflect the Parties' assessment and estimate of such damages and financial losses. In light of the foregoing and the equal bargaining power of the Parties, the EPC Contractor accepts and agrees to the Performance Liquidated Damages and Availability Liquidated Damages as liquidated damages.

ARTICLE 10. EPC CONTRACTOR INSPECTION

1. The EPC Contractor (a) has inspected the Site and surrounding premises where the Work is to be performed, and (b) is satisfied with the conditions under which it will perform the Work or any matter that could affect the Work. The EPC Contractor acknowledges that the Site is a former landfill, has conducted an investigation of the facts and circumstances around the closing of the landfill, and represents and warrants that (i) the landfill was properly closed in accordance with Law, and (ii) the Site is suitable for the purpose of siting the Project. No allowances shall be made if the EPC Contractor has failed to adequately inspect the Site or surrounding premises.

2. The EPC Contractor (a) has ascertained all the facts concerning conditions found at the location of the Work, including all physical characteristics above, on and below the ground, and (b) understands all of the technical, administrative, organizational, procedural, legal, regulatory and other obstacles and constraints associated with constructing the Project on the Site. The Company shall have no responsibility with respect to ascertaining for the EPC Contractor facts concerning physical or other characteristics or constraints at the Site.

ARTICLE 11. CHECKED DIMENSIONS

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

ARTICLE 12. EPC CONTRACTOR'S DRAWINGS

1. Upon request, the EPC Contractor shall furnish prints of shop or detailed drawings for the Company's review and comment, and shall address any such comments to the Company's satisfaction before fabrication of any part of the Work is commenced. The EPC Contractor shall prepare these drawings on the NTP Date.

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

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

ARTICLE 13. WARRANTY AND CORRECTION OF WORK

1. The EPC Contractor warrants that for five (5) years from the date of Substantial Completion (the "Warranty Period"), all Work including Materials provided by the EPC Contractor or any of its Subcontractors shall: (a) be of high quality and be free from any

defects or deficiencies; (b) be suitable for the intended purposes; (c) result in dependable service and performance as specified in, or which may reasonably be inferred from, this EPC Contract; (d) comply with current industry codes and standards and sound engineering and work practices in the U.S. solar industry; (e) comply with all applicable Law and the Land Use Agreements; (f) not violate any patent, copyright, or other proprietary interest; (g) achieve the System Performance Guarantees; (h) otherwise fully conform in all respects to the EPC Contract, and (i) shall be new and free from any Lien.

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

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

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

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

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

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

ARTICLE 14. ASSIGNMENT

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

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

ARTICLE 15. LIENS

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

2. In the event that any Lien is filed against the Company, the Host or the Site by any Subcontractor, then the EPC Contractor, at no cost or expense to the Company, shall immediately: (a) pay the claimant thereof and obtain a discharge thereof from the claimant, or cause the Lien to be discharged by filing a surety bond or making a deposit of funds in the manner required by law; and (b) take any and all other steps which may be necessary to resolve and discharge any such Lien.

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

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

ARTICLE 16. INDEMNIFICATION

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

2. Losses and Damage.

(a) The EPC Contractor shall defend, at the Company's option and at the EPC Contractor's own cost and expense, and shall indemnify and hold harmless each Company Person from and against any Loss due to personal injury, death, or occupational disease of any person (including any of the EPC Contractor's or any Subcontractor's employees or agents) and/or loss or damage to any real or personal property; which directly or indirectly arises out of or results from or is caused in whole or in part by any act or omission, willful misconduct or negligent, reckless or tortuous act or omission of the EPC Contractor and/or any of its Subcontractors.

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

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

3. Compliance With Law. The EPC Contractor shall comply with all applicable Law (and any Change-in-Law), and the requirements of all commissions, boards, bodies, and agencies having jurisdiction over the Company, any EPC Contractor Person, Work, or over or with respect to any persons or entities employed in the provision of Work. The EPC

Contractor shall indemnify and hold harmless each Company Person from and against any and all Losses which in whole or in part arise out of, relate to, result from, or are connected with any violation thereof by the EPC Contractor or any of its Subcontractors. The EPC Contractor shall, at the Company's option and at the EPC Contractor's expense, defend the Company against any and all Claims whether just or unjust, which in whole or in part actually or allegedly arise out of, relate to, result from, or are connected with any such violation by the EPC Contractor or any of its Subcontractors, provided that the EPC Contractor shall not settle or make a plea with respect to any proceeding without the Company's prior written consent.

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

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

6. The EPC Contractor shall defend, in good faith and at its expense, subject to the provisions of this Article 16, any claim or demand set forth in a Notice of Claim relating to a third-party claim that is properly indemnifiable hereunder or that the EPC Contractor disputes but elects to defend (and reserve for subsequent determination whether properly indemnifiable hereunder), and the Company, at its expense, may participate in the defense. Within thirty Days after receipt of a Notice of Claim, the EPC Contractor must notify the Company in writing to confirm that the EPC Contractor is proceeding with the defense of the third-party claim as required hereunder. The Company may not settle or compromise any third-party claim as long

as the EPC Contractor is defending it in good faith and is diligently conducting such defense. If the EPC Contractor does not so notify the Company that the EPC Contractor is proceeding with the defense of the third-party claim, the Company may undertake its defense, and the EPC Contractor will be bound by the result obtained by the Company through settlement or judgment and is precluded from arguing that Company's defense costs are unreasonable.

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

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

ARTICLE 17. INSURANCE

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

2. The EPC Contractor shall promptly notify the Company of any actual or potential insurable claim in excess of fifty thousand dollars (\$50,000).

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

4. The insolvency or bankruptcy any insurance company shall not excuse the EPC Contractor from its obligations to obtain insurance as herein required. If a required policy is cancelled, or upon the insolvency, bankruptcy or failure of any such insurance company, the EPC Contractor shall promptly obtain new insurance policies in the amounts and coverage required hereby.

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

ARTICLE 18. SAFETY MEASURES

1. The EPC Contractor shall take all precautions necessary to protect from personal injury, death or occupational disease all workers and other persons who may be on or about the Site or surrounding premises where Work is being performed. The EPC Contractor shall (i) submit to Company for pre-approval a health and safety plan, and (ii) designate in writing to the Company the EPC Contractor Safety Representative for the Site and surrounding premises where the Work is performed.

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

3. The Company shall have the right to stop Work whenever, in the Company's judgment, environmental issues, safety violations or other conditions or circumstances exist that could result in personal injury, death, occupational disease or damage to property and the EPC Contractor shall bear all costs and expenses related to such stoppage of Work. At the request of Company, the EPC Contractor shall remove those persons responsible for the safety violations from the Site. The EPC Contractor's failure or refusal to correct safety violations shall entitle the Company to terminate this EPC Contract for cause.

4. The EPC Contractor shall perform all Work in compliance with (a) a Site-specific Health and Safety Plan proposed by the EPC Contractor and approved by the Company, and (b) all applicable Law including OSHA. After the NTP Date, the EPC Contractor shall determine and promptly advise the Company if the Work requires compliance with OSHA regulation (x) "Occupational Exposure To Bloodborne Pathogens" (29 CFR 1910.1030), or (y) Hazardous Waste Operations and Emergency Response ("HAZWOPER") regulations (29 CFR 1910.120). The EPC Contractor shall inform all its employees and Subcontractors of any potential biohazard and ensure that universal precautions are exercised in the handling of such materials to prevent or eliminate this potential.

5. The EPC Contractor shall (a) immediately notify Company's project manager by telephone upon the occurrence of any Incident, (b) deliver to Company a written report within 24 hours of any Incident describing the nature and cause of the Incident, and EPC Contractor's response to the Incident, and (c) a copy of all reports made to Governmental Authorities or insurance companies relating to any accident or injury occurring during the performance of the Work within 24 hours of their submission.

6. No Material incorporated into the Work shall contain (a) asbestos except as permitted by EPA Regulations (40 CFR 763.145), or (b) Hazardous Materials.

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

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

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

ARTICLE 19. PROTECTION OF WORK AND PROPERTY

1. The EPC Contractor shall assume the risk of loss or damage to real or personal property and to all Work, including Materials delivered to Contractor or accepted at point of storage by Contractor until the later of the Substantial Completion Date or the date the Work is accepted by the Company.

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

3. The EPC Contractor shall replace, repair or reconstruct, all at its expense and as promptly as possible, any portion or all of the Work that is lost, damaged or destroyed (including any damage or loss that has occurred as the result of a Force Majeure Excused Event) irrespective of how such loss, damage or destruction shall have occurred. Where acts or omissions of the EPC Contractor or its agents, employees, Subcontractors, or any of them results in damage to property, defective workmanship, or excessive cost of Work or any or all of them, the cost of correcting such damages, deficiencies, and excessive costs shall be borne by the EPC Contractor. If the Company has already paid the cost occasioned by such acts or omissions, it may withhold, deduct, or set off money due the EPC Contractor to reimburse the Company for such cost.

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

ARTICLE 20. CREDIT ENHANCEMENT

1. Concurrently with the execution and delivery of this EPC Contract, the EPC Contractor shall deliver to the Company the Performance LC issued by an Eligible Bank in a stated amount equal to ten percent (10%) of the EPC Contract Price which shall secure the payment, performance and discharge of all of the EPC Contractor's obligations under this EPC Contract including the failure to (a) pay Liquidated Damages, (b) discharge any Lien, and (c) indemnify the Company in accordance herewith. The Performance LC shall expire no earlier than thirty (30) Days after the Final Acceptance Date. In lieu of providing a Performance LC, EPC Contractor shall deliver to the Company concurrently with the execution and delivery hereof cash collateral in an amount equal to ten percent (10%) of the EPC Contract Price ("Cash Collateral") to be used by the Company for the foregoing purposes. The Company shall return the Cash Collateral no later than thirty (30) Days after the Final Acceptance Date. The Cash Collateral shall be transmitted to Company by wire transfer pursuant to the following wire instructions:

Bank Name:
ABA:
Account:
Account Name:

2. As a condition of Final Acceptance, the EPC Contractor shall deliver to the Company an irrevocable standby letter of credit in substantially the form of Exhibit P (the "Workmanship LC") issued by an Eligible Bank in a stated amount equal to two percent (2%) of the EPC Contract Price which shall secure the payment, performance and discharge of all of the EPC Contractor's obligations under this EPC Contract arising after Final Acceptance. The Workmanship LC shall expire no earlier than five years after the Final Acceptance Date. In lieu of the Workmanship LC, EPC Contractor shall have the option of providing cash in an amount equal to two percent (2%) of the EPC Contract Price to be held by the Company for five years for the foregoing purposes.

3. EPC Contractor shall deliver its audited financial statements (which shall be in form and substance acceptable to Company) and, if a guaranty is provided under this EPC Contract, the audited financial statements of the guarantor, to the Company as soon as reasonably practicable after the end of each fiscal year during the term of this EPC Contract, but in no event later than 120 days after the end of such year. Company shall perform an annual review of the audited financial statement and, if the Company determines that there has been a material adverse change in the EPC Contractor's or Guarantor's financial condition, the Company may request additional credit enhancements.

ARTICLE 21. INDEPENDENT CONTRACTOR

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

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

3. The EPC Contractor shall have full responsibility for all labor and employment matters for itself and its Subcontractors including the selection, hiring, discipline, supervision, control, compensation, benefits, labor relations, collective bargaining, payroll taxes and costs.

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

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

ARTICLE 22. SUBCONTRACTORS AND VENDORS

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

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

ARTICLE 23. FORCE MAJEURE

1. "Force Majeure Excused Event" means, and shall be limited to, those events listed below and occurring in New Jersey or any areas within a 30 mile radius from the

Site, which are outside of the asserting Party's control that materially and adversely affect the performance of a Party (other than payment obligations) hereunder: earthquake, volcanic eruption, landslide, famine, plague, epidemic, war, or adverse weather conditions, provided that the adverse weather conditions are of a magnitude which has not occurred within the past fifty (50) years, and provided further that the first ten (10) Days of any such weather related delays shall not be considered a Force Majeure Excused Event.

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

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

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

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

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

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

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

ARTICLE 24. EPC CONTRACTOR PERSONNEL

1. The Key EPC Contractor Personnel are set forth in Exhibit S. No member of the Key EPC Contractor Personnel shall be replaced or reassigned from the Project without Company's prior written approval.

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

ARTICLE 25. HAZARDOUS MATERIALS AND ANTIQUITIES

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

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

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

ARTICLE 26. DOCUMENT DELIVERY

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

ARTICLE 27. SEQUENCE OF WORK

1. The EPC Contractor shall commence Work upon the execution of this Agreement. Notwithstanding the foregoing, the EPC Contractor shall not purchase the Long Lead Time Equipment until the date the Lease becomes effective. The Company shall not be responsible for any costs, expenses or claims associated with Long Lead Time Equipment purchased prior to the date the Lease becomes effective.

ARTICLE 28. COORDINATION AND COOPERATION

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

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

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

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

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

ARTICLE 29. LABOR

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

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

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

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

5. The EPC Contractor and its Subcontractors shall comply with the Company's rules, regulations, and policies regarding personnel practices in the workplace, use of drugs and alcohol, and fitness for duty requirements. Copies of the rules, regulations, policies, and practices are available upon request from the Company. The EPC Contractor shall insert the foregoing compliance obligation into all of its contracts and agreements with the Subcontractors.

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

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

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

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

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

ARTICLE 30. COMPANY DIRECTED CHANGES

1. The Company shall have the right, as described below, to change the scope of the Work and to make alterations, additions, deletions, modifications, changes, or departures in the scope, schedule, sequence, method, or performance of the Work or make changes in any specifications, plans, or drawings, that it may desire (each, a “Company Directed Change”), without invalidating this EPC Contract, and the EPC Contractor agrees to effect all such changes. Any such changes the Company elects to make shall be by written Change Order issued by the Company only and need not be executed by the EPC Contractor to be binding.

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

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

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

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

ARTICLE 31. CHANGES

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

2. In order to be eligible for such a Change, the EPC Contractor must submit a Change Request in accordance with the procedures set forth herein. If it is determined that the

EPC Contractor has demonstrated that it is entitled to a Price Change or a Time Change as a result of a Change Trigger Event, the Parties shall execute a Change Order.

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

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

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

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

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

8. Any Change Request submitted by the EPC Contractor for a Time Change shall be accompanied by supporting documentation and a detailed narrative explaining why the Guaranteed Substantial Completion Date should be extended, and for how long, in accordance with critical path logic. The supporting documentation shall include updated critical path schedules and demonstrate, by comparison of unaffected and affected schedule versions, the relationship between the initiating event and both the existence and extent of the EPC Contractor's entitlement to additional time.

9. The Parties shall attempt to agree upon a Change within thirty (30) Days of the EPC Contractor's submission of a properly and fully documented Change Request to Company, provided always that while any Change Request is pending, the EPC Contractor shall continue to perform the Work in strict adherence to the Project Schedule and otherwise in accordance with the provisions of this Contract. The EPC Contractor shall not perform any extra or out of scope Work unless expressly authorized, in writing, by the Company.

10. When a Change has been determined and agreed upon pursuant to this Article, the Parties shall execute a Change Order reflecting such Change. The EPC Contractor may not vary or alter any part of the Work, except in accordance with a Change Order executed by the Parties or as directed by Company pursuant to a Company Directed Change. Once the parties execute a Change Order with respect to any matter, the EPC Contractor shall not be entitled to any Change or any claim for a Change, schedule extension or variation or modification of any other item that was included in such Change Order, nor will any subsequent Change Order (except as expressly set forth therein) be construed to alter a prior Change Order. Changes in this Contract shall be made only to the extent expressly set forth in a Change Order executed by the Parties.

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

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

ARTICLE 32. COMPANY'S RIGHT TO DO WORK

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

2. Company shall have the right to perform work with its own employees or by other contractors and to permit other entities to do work during the progress and within the

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

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

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

ARTICLE 34. PROJECT SCHEDULE

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

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

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

ARTICLE 35. FINANCING

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

ARTICLE 36. INSPECTION, TESTS, AND REVIEWS

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

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

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

ARTICLE 37. SETOFF

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

ARTICLE 38. DISPUTES

1. Notwithstanding the existence of a dispute between the Company and the EPC Contractor, the EPC Contractor shall diligently and without interruption proceed with the Work so as to ensure full completion of the Work on time and in accordance with the EPC Contract.

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

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

4. If a dispute arises in connection with the EPC Contract, the Parties shall refer the dispute to senior officers of each with settlement authority. For a period of 15 Days thereafter, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be settled within such period, the Parties may proceed in accordance with Article 53.

ARTICLE 39. ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

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

ARTICLE 40. SUSPENSION OF WORK

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

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

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

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

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

ARTICLE 41. TERMINATION FOR CONVENIENCE

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

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

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

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

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

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

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

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

ARTICLE 42. EVENTS OF DEFAULT AND TERMINATION FOR CAUSE

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 43. REPRESENTATIONS

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

1. EPC Contractor has thoroughly examined and reviewed with legal counsel this EPC Contract and all applicable Law, which has been considered in the calculation of the EPC Contract Price and is reflected in the design of the Project and the Work;

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

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

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

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

6. EPC Contractor is familiar with all labor conditions and agreements relating to the performance of the Work;

7. EPC Contractor will design the Project so that its useful life may reasonably be expected to exceed twenty five (25) years; and

8. EPC Contractor is satisfied as to the means of communication with, and access to and through, the Site and any accommodations (including lay down areas) the EPC Contractor may require.

ARTICLE 44. NATURE OF THE COMPANY'S RIGHTS

1. The rights and remedies of the Company in the EPC Contract are cumulative and in addition to any other rights or remedies to which the Company may be entitled under law or in equity, and the exercise of any such rights or remedies shall not exclude the exercise of any other rights or remedies to which Company may be entitled. Neither the exercise

of the Company's rights or remedies, nor the failure to exercise such rights or remedies, shall, in any manner, create any obligation to any third person or entity.

ARTICLE 45. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

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

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

ARTICLE 46. EMPLOYEE PROTECTION

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

ARTICLE 47. COMPLIANCE WITH WORK PERIODS IN LAND USE AGREEMENTS

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

ARTICLE 48. PROPRIETARY INFORMATION

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

ARTICLE 49. ADVERTISING

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

ARTICLE 50. STANDARDS OF INTEGRITY

1. The EPC Contractor, its employees and Subcontractors shall adhere at all times to the provisions contained in PSEG's Standards of Integrity, which can be found on its website, www.pseg.com/integrity or in booklet form upon request. In conjunction therewith, EPC Contractor, its employees and Subcontractors may be required to complete a certification of compliance if they are deemed to be involved in duties related to procurement activities, such as the selection and evaluation of bidders, Contract Administration activities, or, have access to what the Company regards as confidential information.

ARTICLE 51. WAIVER

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

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

ARTICLE 52. HEADINGS

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

ARTICLE 53. GOVERNING LAW, VENUE

This EPC Contract shall be governed by, and construed in accordance with the laws of the State of New Jersey. Any legal claim, suit, proceeding, or action hereunder shall be brought in a court of competent jurisdiction located in Newark, New Jersey. The Parties agree

not to submit any dispute or difference between them to arbitration. By execution and delivery of this EPC Contract, each of the Parties hereby accepts generally and unconditionally the jurisdiction of the aforesaid courts and appellate courts. Each of the Parties hereby irrevocably consents to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof to it by registered or certified mail, postage prepaid, return receipt requested, to each of the Parties at its address set forth herein. Each of the Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in such respective jurisdictions. To the extent permitted by applicable Law, each of the Parties hereby irrevocably waives all right of trial by jury in any action, proceeding, or counterclaim arising out of or in connection with this EPC Contract or any matter arising hereunder.

ARTICLE 54. SURVIVAL

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

ARTICLE 55. LIMITATION OF LIABILITY

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

2. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

3. The indemnity provisions and insurance coverages to be provided herein shall in no way affect, nor are they intended as a limitation of the EPC Contractor's liability with

respect to its performance of the Work. The issuance of a Certificate of Substantial Completion or Certificate of Final Acceptance shall not in any way modify or alter the EPC Contractor's obligations hereunder. No inspection, approval or payment by Company under this EPC Contract shall be construed to be an acceptance of defective material or workmanship, an admission that EPC Contractor performed the Work in accordance with the EPC Contract, or relieve the EPC Contractor of any of its obligations under this EPC Contract.

ARTICLE 56. NOTICES

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

a. if to the Company:

80 Park Plaza
T-4
Newark, NJ 07102
Telecopy: (973) 643-8349
Telephone: (973) 430-5430
Attention: Vice President Commercial Operations

with a copy to:

80 Park Plaza
T-19
Newark, NJ 07102
Telecopy: (973) 643-8385
Telephone: (973) 430-7698
Attention: Vice President Corporate & Commercial

b. if to the EPC Contractor:

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

ARTICLE 57. CONFIDENTIAL INFORMATION

1. Any and all information or data, whether in oral, written, or physical form, (a) concerning the Company or (b) any product of the Company's expenditure of time, effort, money or creativity, which is (i) obtained from or provided by the Company to the EPC Contractor, (ii) developed, compiled or prepared by the EPC Contractor for the Company, or (iii)

identified by the Company as confidential or proprietary shall be treated and maintained by the EPC Contractor as the Company's confidential and proprietary information and shall not in any manner be used or disclosed, in whole or in part without the Company's prior written permission.

2. The Company may disclose upon request any information related to this EPC Contract to the NJBPU or any other Governmental Authority having jurisdiction over the Company. The Company will request confidential treatment of such disclosed information, but can make no assurance that such request will be honored.

ARTICLE 58. EPC CONTRACT PRICE

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

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

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

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

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

ARTICLE 59. EPC CONTRACTOR TAXES

1. The EPC Contract Price includes all the EPC Contractor Taxes and import or other duties. The EPC Contractor shall pay all payroll and other related employment and compensation taxes for the EPC Contractor's employees and all federal, state and other taxes which may be assessed on the EPC Contractor's income from the Work, as well as any and all engineering and business license costs, excise, and other similar taxes which may be assessed on the Work or any equipment including import duty and excise taxes and any sales (including without limitation New Jersey sales taxes), works, use, or value added taxes which may be

assessed on the Work (collectively, “EPC Contractor Taxes”). The firm fixed price set forth in this EPC Contract shall include all sales and use taxes, excises, customs and import duties, charges and levies, assessments or other charges of any kind levied by any Governmental Authority on or because of the Work, or on or because of EPC Contractor’s income in the performance of this EPC Contract and EPC Contractor shall be responsible for all foreign, U.S. Federal, State, City and other local income, license, net-worth, privilege, personal, gross receipts or any other taxes arising out of or related to the EPC Contract or the performance of the Work.

ARTICLE 60. PAYMENTS

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

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

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

ARTICLE 61. RETAINAGE LC

1. In lieu of cash Retainage, the EPC Contractor may deliver to the Company a Retainage LC issued by an Eligible Bank which is drawable by the Company in New York City and which shall expire no earlier than thirty (30) Days after the Final Acceptance Date. The face amount of the Retainage LC shall be ten (10%) of the EPC Contract Price. Upon receipt of the Retainage LC, the Company will not withhold (and/or return, as the case may be) Retainage in an amount equal to the available and undrawn amount of the Retainage LC. All costs related to the Retainage LC shall be borne by the EPC Contractor.

ARTICLE 62. PAYMENT AND TITLE

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

to the Company, upon the Company's request. Originals of such records shall be promptly provided for the Company's review, at no cost or expense to the Company, upon the Company's request.

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

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

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

ARTICLE 63. WITHHOLDING OF PAYMENTS

1. The Company may withhold payments or deduct and offset from amounts allegedly due the EPC Contractor due to: (a) the EPC Contractor's failure to comply with any warranty or remedy defective Work, including, without limitation, incomplete Punch List items; (b) the EPC Contractor's failure to conform to or perform the EPC Contract; (c) levying of incorrect charges by the EPC Contractor; (d) the EPC Contractor's failure to pay any of its Subcontractors promptly; (e) the EPC Contractor's failure to carry out the Company's instructions; (f) the EPC Contractor's failure to adhere to the Project Schedule or complete the Work within the time required thereby; (g) termination of the EPC Contractor for cause or damage to the Company or its property arising out of the Work; (h) claims or reasonably anticipated claims against the Company or its property or affiliates arising out of the Work; (i) Claims or Liens against the Project, the Site or either Party caused by or arising out of the Work by any EPC Contractor Person; (j) damage to Company or any Subcontractor that results from the EPC Contractor's failure to obtain or maintain insurance required to be maintained by it

hereunder; (k) the EPC Contractor's failure to provide, on a timely basis, the documentation required under Part I; (l) the EPC Contractor's failure to pay when due any Liquidated Damages; (m) claims filed by any Subcontractor that have not been paid in accordance with its Subcontract; (n) the EPC Contractor's failure to make proper payment for any materials or labor or other obligations incurred as a result of activities carried out under this EPC Contract; or (o) reasonable evidence that any prior payment (together with the previously requested amounts) exceeds the amount payable with respect to Work actually performed.

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

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

ARTICLE 64. PAYMENT OF THE RETAINAGE

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

ARTICLE 65. PAYMENTS NOT APPROVAL OF WORK

1. No payment made hereunder shall be considered an approval or acceptance of any Work or constitute a waiver of any claim or right that the Company may have at that time or thereafter, including claims and rights relating to warranty and indemnification obligations of the EPC Contractor.

ARTICLE 66. FINAL PAYMENT

1. The EPC Contractor's acceptance, by endorsement or otherwise, of final payment shall constitute a waiver of any and all claims, including any and all lien rights, claims, or notices of any kind against the Company or its property.

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

ARTICLE 67. SUSPENSION OF PAYMENTS

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

END OF ARTICLES

DRAFT

Exhibit A

Change Request

Public Service Electric and Gas Company

CHANGE REQUEST

Change Order No.: _____

Change Order Date: _____

Reference is made to the Turnkey, Lump Sum, Engineering, Procurement and Construction Contract For a Solar Photovoltaic Project between _____ (the "EPC Contractor") and Public Service Electric and Gas Company ("PSE&G"), dated as of _____, 2013 (the "Contract"). Capitalized terms not otherwise defined in this Change Order have the same meaning as specified in the Contract.

Account Code: _____

Vendor/Contractor/Subcontractor: _____

Items	Description	Costs
	Contract Price Increase: Reference Documents:	

Original Contract Price: _____

Previously approved Price Change Orders: _____

Previous Contract Price: _____

Amount of this Change Order: _____

New Contract Price: _____

Original Guaranteed Substantial Completion Date: _____

Previously approved Time Change Orders: _____

Amount of this Time Change Order: _____

New Guaranteed Substantial Completion _____
Date: _____

Accepted and agreed this ____ day of _____, 2012.

EPC Contractor

Public Service Electric and Gas Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DRAFT

Exhibit B

Milestone Payment Schedule

Milestone	Payment
Conceptual Design	5.0%
Issued for Construction Package	15.0%
Permits to Construct are in hand	10.0%
Site Civil Work Completed	10.0%
100% of Racking Delivered	7.5%
100% of Modules Delivered	7.5%
Inverters Delivered	5.0%
1/3 of Modules Installed	5.0%
2/3 of Modules Installed	5.0%
All Modules Installed	5.0%
Solar Facility Interconnected	10.0%
Substantial Completion (including warranties & submittals)	5.0%
Final Acceptance	10.0%
	100.0%

Exhibit C

Payment Application

Date: [_____], 2013,

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

Gentlemen:

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

(a) The following is the current status of the Contract account:

Contract Price \$ _____

All Price Changes \$ _____

Total Milestone Payments made by Company \$ _____

(less Retainage and any other withheld amounts or adjustments) \$ _____

Approximate Unpaid Contract Price \$ _____

(b) the information in all documents and materials prepared or signed by the EPC Contractor or any of its officers, agents or employees and submitted to PSE&G in support hereof is, in all material respects, true, correct and complete;

(c) the portion of the Work, as more particularly set forth in an annex A hereto and corresponding to milestone number ___ in the Milestone Payment of ___% of the Contract Price minus the applicable Retainage in the amount of \$___; and

(d) no materially adverse change in the financial condition of the Contractor has occurred since [insert date of last application for payment] except as has been disclosed in writing in an annex hereto.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of the date first above written.

Contractor

Name:
Title:

DRAFT

Exhibit D

Retainage LC

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at ("Location") on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. "Payment in the amount due of \$ _____ is due Beneficiary from the Account Party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties."

OR

2. "Payment in the amount of \$ _____ [the entire undrawn amount of the Letter of Credit] is due beneficiary from the account party. Account party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. _____."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder. Amounts due in excess of this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire on _____. Failure of the Account Party to extend the expiry date of this Letter of Credit at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce (“ICC”) Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New Jersey.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]

Signed and delivered this ___ day of _____, 2013.

By: _____

Officer's Title: _____

For: _____

Subscribed and sworn before this
___ day of _____, 2013.

DRAFT

Exhibit F

Site

[Include Street Address, Tax Lot and Block, or Metes and Bounds Description sufficient to accurately identify the location of the Project]

DRAFT

Exhibit G

Performance LC

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at _____ (Location) on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. Payment in the amount due of \$ _____ is due Beneficiary from the Account Party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties.

OR

2. Payment in the amount of \$ _____ [the entire undrawn amount of the Letter of Credit] is due Beneficiary from the Account Party. Account Party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. _____."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder. In no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire upon the earlier of (a) the close of business on _____ and all drafts and accompanying documents must be presented to us on or before that time, or (b) the day that we honor a draw under which the full amount of this letter of credit has been drawn. Failure of the Account Party to extend the expiry date of this Letter of Credit by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce ("ICC") Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]

Exhibit H

Labor Rates and Unit Pricing

[to be provided by EPC Contractor]

DRAFT

Exhibit I

Affidavit of Payment and Partial Release of Claims

IN CONSIDERATION of the payment of \$_____ received from Public Service Electric and Gas Company (“PSE&G”), the undersigned, _____, releases PSE&G from all claims, demands and rights of lien that he/it may have against _____ to the extent of the amount shown hereon and previously paid, for all work, labor, materials, machinery, plant or other goods, equipment or services done, performed or furnished as specified below and denoted as “Work Performed”, in connection with the following contract:

Company: Public Service Electric and Gas Company
Contractor: _____
Address of Project: _____
Work Performed: _____

The undersigned waives and releases any claim and right of lien which it may now or hereafter have in connection with said contract, and warrants and agrees that he/it has not and shall not assign any claims for payment or right to perfect a lien against said contract.

The undersigned agrees that all guarantees and warranties required under the terms of the said contract pertaining to the work, labor and materials furnished by the undersigned shall remain in full force and effect in accordance with their terms which shall not be extended nor enlarged hereby.

The undersigned represents that all amounts due from the undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid with respect to the work referenced above to the date of this waiver, or will be paid from these funds; and, that there are no amounts for which the undersigned would be liable under said contract for the work referenced above; and, that all other terms of the relevant subcontract, relating to the work set forth above, have been fully complied with by the undersigned.

The undersigned warrants that it has not been delayed in the performance of its work to date and that it has incurred no extra costs in connection herewith. The undersigned specifically waives, relinquishes and releases any and all claims incurred or alleged in connection with its work to date except only those claims, if any, previously denominated as claims and submitted in writing to _____.

The undersigned agrees to indemnify, defend and hold harmless Public Service Electric and Gas Company from any and all losses, claims, damages, expenses, including attorneys’ fees, arising directly or indirectly from (a) any failure of the undersigned to pay in full all sums due its

laborers, subcontractors, material men and suppliers on the project, (b) from any liens against the project or the project monies filed by such laborers, subcontractors, material men or suppliers or (c) from any misrepresentation contained herein.

Total Contract Price: _____

Balance Due on Total Contract after above payment: _____

Date: _____

By: _____
Title: _____

State of New Jersey)
) ss:
County of _____)

Subscribed and sworn before this ____ day of _____, 2013.

Notary Public

My commission expires: _____

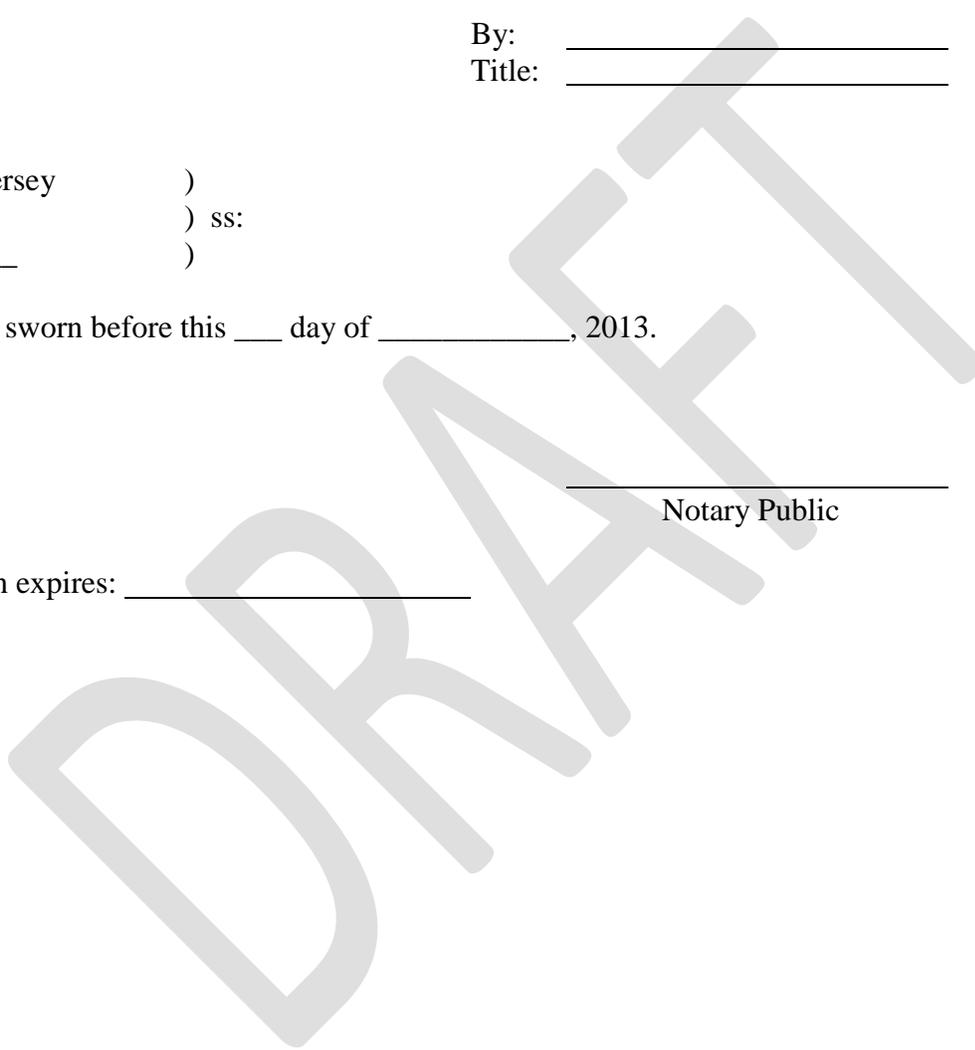


Exhibit J

Certificate of Substantial Completion

The undersigned, _____ (“EPC Contractor”), does hereby deliver this Certificate of Substantial Completion, complete except for countersignature, to Public Service Electric and Gas Company (“Company”). Terms used and not defined herein shall have the meanings set forth in that certain Turnkey Lump-Sum Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project (“EPC Contract”), dated as of _____, 2013, by and between Company and EPC Contractor.

EPC Contractor hereby certifies and represents that the following statements are true as of the date set forth below:

- a. all equipment has been installed in accordance with manufacturers’ requirements and the requirements of this EPC Contract and all applicable pass-through warranties, as identified on Exhibit L attached hereto, have been assigned to the Company;
- b. all Work has been completed to the extent necessary to permit safe and reliable generation and transmission of electrical power in accordance with the Scope of Work and design specifications;
- c. the Punch List has been agreed upon and accepted in writing by the Company;
- d. all Work has been completed in accordance with Law, Land Use Agreements, and all building, electrical and code inspections required by the local electric distribution company or Law have been successfully completed and applicable certifications have been obtained;
- e. all of the following documents to the extent necessary to verify the requirements of this EPC Contract have been transmitted to Company and compiled in a format consistent with this EPC Contract: (i) all vendors’ and other manufacturers’ instructions, tests and certified drawings relating to Materials; (ii) QA/QC, and other test and inspection certificates and reports applicable to the Work; (iii) Specifications and Drawings (current as of such time); (iv) construction turnover packages; and (v) Project operating procedures and manuals, including all applicable system operations and maintenance manuals;
- f. the EPC Contractor has replaced or refilled any consumables and spare parts consumed during commissioning and testing;
- g. all activities in the construction and testing phases, as more particularly described in this EPC Contract, have been successfully completed;

- h.** all Delay Liquidated Damages have been paid in full;
- i.** the Project has successfully passed the Performance Test;
- j.** the medium voltage infrastructure and the grid connection for the Project are mechanically, electrically and functionally complete; the Project is interconnected with the local electric distribution company and is producing electricity; and
- k.** the NJBPU or its designee has certified that the Project is qualified to generate SRECs based on the electrical output of the Project.

Executed this ____ day of _____, 2013

EPC CONTRACTOR

ACCEPTED BY COMPANY:

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

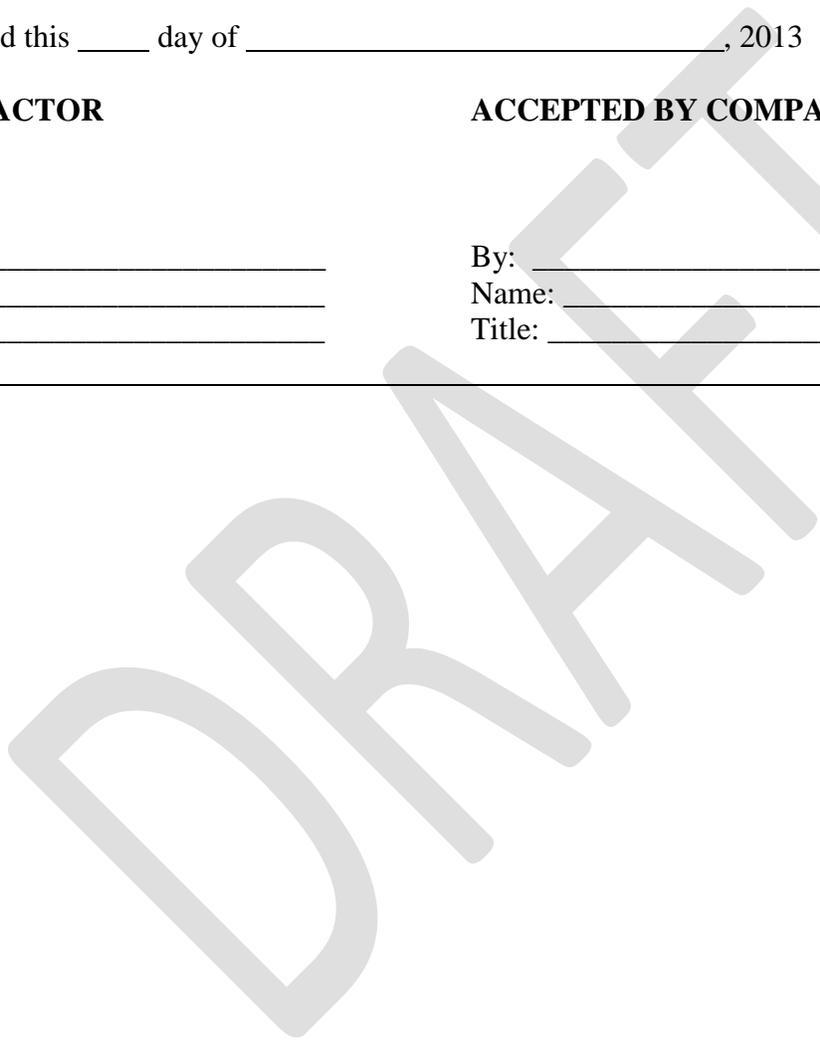


Exhibit K

Certificate of Final Acceptance

The undersigned, _____ (“EPC Contractor”), does hereby deliver this Certificate of Final Acceptance, complete except for countersignature, to Public Service Electric and Gas Company (“Company”). Terms used and not defined herein shall have the meanings set forth in that certain Turnkey Lump-Sum Engineering, Procurement and Construction Contract for a Solar Photovoltaic Project (“EPC Contract”), dated as of _____, 20__, by and between Company and EPC Contractor.

EPC Contractor hereby certifies and represents that the following statements are true as of the date set forth below:

- a.** the Company has issued a Certificate of Substantial Completion;
- b.** the Site is free of construction debris;
- c.** all items on the Punch List have been completed;
- d.** no Change Requests are pending;
- e.** EPC Contractor has provided six (6) hard copy sets of the final Project as-built documentation including:
 - *All as-built engineering drawings and specifications
 - *Vendor Drawings and Data
 - *Instruction Manuals
 - *Installation, Operation and Maintenance Manuals
 - *All Permits with copies of close-out records as required
 - *Control system software.
 - *Spare Parts Lists
- f.** EPC Contractor has provided one (1) CD of the electronic as-built documentation, including executable CADD files and “.pdf” versions of all design drawings;
- g.** EPC Contractor has provided six (6) copies of an as-built site survey documenting the Solar Project as-built conditions in relation to the Site, easement areas and right of way areas;

- h.** all Liquidated Damages have been paid in full;
- i.** the Company has received an Affidavit of Payment and Final Release, in the form set forth in Exhibit E from the EPC Contractor;
- j.** the Company has received releases and waivers of all Liens against the Project, the Site, Company and its property from each Subcontractor who performed Work at the Site and such other documentation as Company may reasonably request to establish proof thereof;
- k.** EPC Contractor has completed all Work;
- l.** EPC Contractor has removed all of its construction equipment, material and support personnel from the Site; and
- m.** EPC Contractor has delivered to the Company an irrevocable standby letter of credit or has escrowed funds in accordance with the requirements of Article 20.2.

Executed this ____ day of _____, 200__.

EPC CONTRACTOR

ACCEPTED BY COMPANY:

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

Exhibit L

Pass-Through Warranties

[EPC Contractor to deliver pass-thru warranties from the Major Equipment Vendors at Substantial Completion]

List/Identify Major Equipment Vendors

1. Solar module
2. Inverter
3. Racking system
4. Transformer
5. Switchgear
6. Monitoring equipment

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Exhibit M

System Performance Test Procedures

EPC Contractor shall provide the following Performance Guarantees:

System Output:

The output of the entire Project shall be ____MW AC, which means (a) the sum of the nameplate AC capacities of the inverters shall be no less than ____ MW, and (b) the DC portion of the Project, which is defined as the sum of the nameplate capacities of the solar modules under Standard Test Conditions, shall not be less than ____ MW (DC.)

Guaranteed Acceptance Test Performance Ratio (Guaranteed ATPR):

The Guaranteed ATPR shall be 85% and is defined as follows:

$$PR = \frac{E_{AC}}{\eta_{Plant} * I_{POA} * A_{array}}$$

Where:

E_{AC} = total AC power produced at the point of the delivery (revenue meter)
 η_{Plant} = plant module efficiency at Standard Test Conditions
 I_{POA} = plane of array irradiance measurement
 A_{array} = module total array area

The Guaranteed ATPR shall include all losses including those associated with irradiation, PV modules, module degradation, array mismatches, inverters, inverter power point tracking, wiring, transformers, shading, soiling, degradation prior to Acceptance Test and the like. The only allowable adjustments shall be correction of module performance from actual ambient conditions at the time of the test to Standard Test Conditions.

The System Performance Testing Protocol shall be as follows:

Purpose:

This a spot test according to the test protocol is intended to serve as a detailed technical guide to the application of the provisions of the testing pursuant to this Exhibit M.

Measuring equipment:

Pyranometers:

(2) Kipp & Zonen CMP22 WMO Secondary Standard pyranometers (2% expected accuracy)

Calibrated yearly provided by NREL if possible, or by the manufacturer, EPC Contractor and approved by Company. EPC Contractor shall provide test protocol for Company's review and approval no later than 90 days prior to the planned Acceptance Test.

Datalogger:

Campbell Scientific

CR1000 datalogger

PS100 Battery & power supply

PC400 software

Shortcut software

Laptop computer

USB to 9-pin serial RS 232 cable (Campbell Scientific P/N 17394)

Carrying Case

Back-of-module temperature sensor:

(3) 110PV-L Type E thermocouples

or

SI-111 Infrared radiometer (P/N 19119)

CM230 adjustable (P/N 17908)

Temperature sensor for pyranometer temperature correction:

Campbell Scientific 107-L thermistor sensor or as recommended by pyranometer manufacturer (with CMP22 this is an integral feature of the pyranometer).

Power meter:

ANSI C12.20 Class .2

Pulse output if possible for communication with CR1000 datalogger

Exhibit N
Permit Responsibility Matrix

[To Follow]

The EPC Contractor shall be responsible for all permits not specifically identified on this Exhibit N.

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Exhibit O
Land Use Agreements

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Exhibit P

Workmanship LC

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We, the issuing bank, hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at _____ (Location) on or before the expiration hereof against presentation to us of the following statement, dated and signed by a representative of you, the beneficiary (the "Beneficiary"):

1. Payment in the amount due of \$ _____ is due Beneficiary from the Account Party. Payment has been demanded and not paid in accordance with the agreement(s) between the parties.

OR

2. Payment in the amount of \$ _____ [the entire undrawn amount of the Letter of Credit] is due Beneficiary from the Account Party. Account Party has failed to renew by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary within thirty (30) calendar days prior to the expiry date of Letter of Credit No. _____."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder. In no event will payment exceed the amount available to be drawn under this Letter of Credit.

This Letter of Credit shall expire upon the earlier of (a) the close of business on _____ and all drafts and accompanying documents must be presented to us on or before that time, or (b) the day that we honor a draw under which the full amount of this letter of credit has been drawn. Failure of the Account Party to extend the expiry date of this Letter of Credit by amendment or furnish a new Letter of Credit or provide alternative security acceptable to the Beneficiary at least thirty (30) calendar days prior to its expiration as set forth herein, if required and requested by you shall be an event of default (howsoever such term is defined) under the agreement(s) between you and the Account Party.

Typographical errors other than in amounts are not considered discrepancies. Faxed document(s) are acceptable.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce ("ICC") Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 36 of the UCP, in the event of an Act of God, riot, civil commotion, insurrection, war, or by any strikes or lockouts or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) business days after the place for presentation reopens for business.

With respect to Article 14(b) of the UCP, we shall have three (3) local banking days to examine the documents and determine whether to take up or refuse the documents and to inform the party from which we received the documents accordingly.

This Letter of Credit may not be amended, changed or modified without the express written consent of you, the Account Party and us.

[BANK SIGNATURE]

Exhibit Q

EPC Contractor Insurance

Prior to the start of Work, Contractor shall at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any Work under the Contract the following minimum insurance coverages with carriers acceptable to Company including:

1. Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the Work is to be performed, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
2. Commercial General Liability insurance (occurrence form) providing coverage for premises, bodily injury, property damage, personal injury, advertising injury, if applicable, blanket contractual liability, covering Contractor's obligations under this Contract, products and completed operations for not less than three (3) years from the date the Company accepts the Work, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per project or per location where Work is performed.
3. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by the Contractor in the performance of the Work with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury and property damage.
4. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per project or per location where the Work is performed. This limit applies in excess of each of the coverages set forth above in paragraphs 1 (Employer's Liability), 2 (Commercial General Liability insurance), and 3 (Commercial Automobile Liability insurance), which are scheduled as primary.
5. Pollution Legal Liability Insurance Policy ("PLL Policy") insuring EPC Contractor and Company against liabilities and obligations, including liabilities and obligations pursuant to this Agreement, resulting from or in connection with Environmental Conditions on, at, under or emanating from the Site, including, without limitation, all such conditions existing or occurring prior to the Final Acceptance Date, which PLL Policy shall have a policy term of not less than ten (10) years from the Final Acceptance Date, limits of coverage (per claim and aggregate) of not less than \$20 million and a self-insured retention (per claim) of not more than \$50,000. Company shall be named in such policy as an Additional Named Insured. EPC Contractor shall pay all costs necessary to obtain such policy, shall pay all premiums required by the same when due and shall satisfy all other terms and conditions of such policy imposed upon the Insured. In the event such PLL Policy is cancelled, terminated or coverage is denied by reason of any failure of EPC Contractor to comply with any

terms and conditions of such policy, EPC Contractor shall be responsible at its sole cost and expense for all liabilities and obligations that would otherwise be satisfied or paid by such policy. The policy shall specifically provide for a waiver of subrogation against any named or additional insured.

6. Professional Liability insurance with a minimum limit of five million dollars (\$5,000,000) per claim where the Work involves or includes Contractor providing or performing design, engineering, consulting, or any professional services.
7. Builder's Risk Insurance for the benefit of Company, Financing Parties (if any), EPC Contractor and all Subcontractors or suppliers performing work at the Site. Such coverage shall be in an amount equal to the full replacement value of the Project and be issued by underwriters reasonably acceptable to Company. The policy shall remain in full force and effect from mobilization to the Site until the Substantial Completion. Coverage shall include but not be limited to coverage against perils typically insured against for similar projects, including damage or loss caused by earth movement, flood, windstorm (each with sublimits as commercially available), functional and acceptance testing, fire and extended coverage and including mechanical breakdown and electrical malfunction, and resultant damage due to error in design, defect in materials or faulty workmanship. EPC Contractor shall obtain a waiver by the insurer of all subrogation rights against all insured parties. Policy Deductible amounts shall be based on a "per occurrence" basis not to exceed \$100,000 and shall be for the account of EPC Contractor.
8. Transit Insurance covering any and all EPC Contractor provided Materials and equipment intended to form a part of the Project while they are in transit (including inland, ocean or air transit) from anywhere in the world, including intermediate storage. Coverage shall attach at the commencement of loading and continue until the completion of offloading at the Project Site and shall be written with a policy limit not less than the value of the largest single cargo shipment. Policy Deductible amounts shall be based on a "per occurrence" basis not to exceed \$50,000 and shall be for the account of EPC Contractor.

General Conditions applicable to insurance coverages.

A. Except for Professional Liability cover, the insurance coverages to be provided by Contractor under this Contract shall not include (i) any "claims made" insurance policies, (ii) any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by Company, and (iii) any restrictions or limitations which are inconsistent with the Company's rights under the Contract.

B. All insurance policies shall provide the following: (i) be primary to any other insurance or self-insurance carried by the Company; (ii) contain standard cross-liability provisions; and (iii) provide for a waiver of all rights of subrogation against the Company by Contractor and its insurers.

C. Company reserves the right at any time, including after the Work has begun, to require Contractor to procure and maintain additional coverages or limits and Contractor shall furnish such additional insurance or limits. The Company shall reimburse the EPC Contractor for any increase in premium at cost without mark-up.

D. All liability insurance policies shall name the Company and its successors and assigns, as additional insureds and Contractor shall maintain the required coverages, naming the Company as an additional insured, for a period of not less than three (3) years from the date the Company accepts the Work.

E. Prior to the start of any Work, Contractor shall deliver to the Company evidence of the required insurance coverage in the form of Certificates of Insurance acceptable to Company. The Certificates of Insurance and the insurance policies shall provide that coverage afforded under the policies will not be canceled, allowed to expire or the limits in any manner reduced, until at least thirty (30) days prior written notice, ten (10) days written notice in the case of nonpayment of premium, has been given to Company. Company may inspect any or all policies of insurance at any time.

F. All insurance coverages required under the Contract shall be provided by insurance companies acceptable to Company and having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in paragraph 4 above (Evidence of Insurance)).

G. Failure to obtain and maintain the insurance required under the Contract shall constitute a material breach of the Contract and Contractor will be liable for any and all costs, liabilities, and damages, (including attorney's fees, court costs, and settlement expenses) resulting to Company from such breach. In the event Contractor fails to provide the required insurance, Company may at its option, procure said insurance at Contractor's expense.

H. The insurance requirements set forth above are to protect the Company from any and all claims by third parties, including employees of the Contractor, its agents, subcontractors and invitees. Said insurance, however, is in no manner to relieve or release Contractor, its agents, subcontractors and invitees from, or limit their liability as to, any and all obligations assumed under the Contract.

Exhibit R

Availability Factor Test

On the one year anniversary of the Substantial Completion Date, the EPC Contractor shall calculate the availability of the Project for the preceding year using the formula set forth below.

“Actual Available Hours” / “Total Daylight Hours”

“**Available**” means that an inverter is on line and performing.

“**Actual Available Hours**” means the total number of hours that each inverter is Available in the preceding year, as determined by the Project monitoring system.

“**Total Daylight Hours**” means the total number of daylight hours in a day (measured beginning one hour after sunrise and ending one hour prior to sunset) in the preceding year at the Site. Total Daylight Hours shall not include hours of unavailability caused by (a) Force Majeure Excused Events, (b) forced outages resulting from the interconnecting utility, or (c) damage caused by PSE&G or its contractors.

Each inverter at the Project shall be Available for 98% (or more) of the Total Daylight Hours. For every hour the Project is available below 98% of the Total Daylight Hours, the EPC Contractor shall pay liquidated damages in the amount of [\$ TBD] per such hour.

Exhibit S

Key EPC Contractor Personnel

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SURFACE LEASE

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

WHEREAS, by order dated May 31, 2013, the New Jersey Board of Public Utilities (“NJBPU”), in Docket Number EO12080721 (the “BPU Order”), authorized PSE&G to invest funds to construct and own solar electric generating projects located on landfills and brownfields;

WHEREAS, PSE&G desires to lease real property to develop, construct, own and operate a Solar Facility (as defined below) on real property owned by Lessor located at _____; and

WHEREAS, Lessor has agreed to lease certain real property to PSE&G for the construction, operation and maintenance of the Solar Facility.

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

Article 1. DEFINITIONS

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

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

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

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

“BPU Order Condition Precedent” means that neither the staff of the NJBPU nor the New Jersey Division of Rate Counsel shall have objected to the Lease within 10 business days of the submittal of the Lease by PSE&G for review, as further described in the BPU Order.

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

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

“Claims” means, with respect to any Indemnified Person, all claims or actions (including claims for Losses) asserted, threatened or filed against such Indemnified Person by any Third Party, whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an Indemnity in favor of such Indemnified Person, whether such claims or actions are asserted, threatened or filed prior to or after the termination of this Lease, and, in the case of Indemnification arising under Article 13, shall include any such claims or actions asserted, threatened or filed by PSE&G or Lessor, as applicable.

“Closure and Post-Closure Plan” means a written plan approved by the NJDEP for the closure and post-closure care or maintenance of the landfill located on the Leased Property, as the same may be amended from time to time, all in accordance with N.J.A.C. 26:2A-9.

“Closure or Post-Closure Improvements” means all structures, improvements, engineering controls, and equipment, and all associated piping and other infrastructure, required to be installed or installed in connection with closure and post-closure care or monitoring, pursuant to Environmental Laws, of the landfill located on the Leased Premises including any cap, liner, cutoff wall, stormwater management system, gas collection system and leachate collection and/or groundwater monitoring or remediation system.

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

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

“Conditions Precedent” means that the Lease shall not be legally binding on PSE&G until (a) the EPC Contract Condition Precedent, and (b) the BPU Order Condition Precedent have been satisfied.

“Contamination” means the presence of or release of Hazardous Substances (as hereinafter defined) into any environmental media from, upon, within, below, into or on any portion of the Leased Premises so as to require investigation, abatement, encapsulation, cleanup, removal or remediation under any applicable Environmental Law (as hereinafter defined).

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

“Deed Notice” shall have the meaning given to such term in N.J.A.C. 7:26C-1.3.

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

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

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

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

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

“Environmental Permits” means all Permits required to be obtained in relation to the Leased Premises pursuant to Environmental Laws.

“EPC Contract Condition Precedent” means that PSE&G shall have entered into a legally binding contract for the construction of the Solar Facility, which contract shall not have been disapproved by the staff of the NJBPU or the New Jersey Division of Rate Counsel pursuant to the BPU Order.

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

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

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

“Force Majeure” means an event that is not within the reasonable control, and without the fault or negligence, of the claiming Party, and that by the exercise of due diligence such claiming Party is unable to prevent or overcome. The following shall be conclusively deemed to constitute Force Majeure, regardless of whether they satisfy the requirements of the immediately preceding sentence: acts of God; fire; explosion; flood; windstorm or other unusually severe

weather condition; civil disturbance; strike, work stoppage or other labor dispute; labor or material shortage; embargo; insurrection; riot; sabotage; breakdown of or damage to plants, equipment or facilities; a Change in Law; and action or restraint by court order or Governmental Entity (so long as the claiming Party has not applied for or sought or assisted in applying for or seeking such government action).

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

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

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

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

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

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

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

“Interest Rate” means, for any date, the lesser of (a) the sum of the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the highest rate permitted by applicable Law.

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

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

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

“Lessor Facilities” means the existing infrastructure and other facilities of Lessor on the Lessor Property including Closure or Post-Closure Improvements.

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

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

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

“Lost Energy Damages” has the meaning set forth in Section 14.2.

“NJDEP” means the New Jersey Department of Environmental Protection, its Commissioner, bureaus, divisions and sub-divisions.

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

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

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

“Permitted Encumbrances” means the Liens described on Exhibit B.

“Person” means any Entity or natural person.

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

“Property” means the Leased Premises and the Improvements.

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

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

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

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

“Scheduled Expiration Date” means a date that is twenty (20) years from the COD, subject to Section 3.1(b).

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

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

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

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

Article 2. LEASE OF LEASED PREMISES

2.1. **Lease of Leased Premises.** In consideration of the covenants and agreements herein made by the Parties, Lessor hereby lets, demises and leases to PSE&G, and PSE&G hereby leases from Lessor, the Leased Premises for the Term upon the terms and conditions herein provided. Lessor hereby also grants to Tenant, for a period coterminous with this Lease, a non-exclusive right of way and easement to use and access such Leased Premises across or through other portions of the Lessor Property or any surrounding or nearby premises owned or leased by Lessor, passage through which is necessary or convenient to gain access to such Leased Premises.

2.2. **Quiet Enjoyment.** Lessor covenants and agrees that PSE&G shall enjoy quiet use, enjoyment and possession of the Leased Premises for the Term, subject to the provisions of this Lease, without interference or molestation by anyone claiming by, through or under Lessor.

Lessor shall protect and defend the right, title, and interest of PSE&G hereunder from any adverse claim. Landlord will not initiate or conduct activities that may damage, impair or otherwise adversely affect the Solar Facility or the function thereof (including activities that may adversely affect the Solar Facility's exposure to sunlight) and shall promptly cease any such activities upon notice from PSE&G.

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

2.4. Site Preparation. Lessor shall deliver the Leased Premises to PSE&G on the Effective Date clean and free of debris, with any grass mowed and trees and shrubs trimmed. Lessor shall have properly closed the landfill located on the Leased Premises in accordance with all applicable Environmental Laws, all Closure and Post-Closure Improvements shall be installed and in good operating condition and Lessor shall be in compliance with all Environmental Laws pertaining to such landfill, including all such laws pertaining to closure and post-closure care or maintenance of such landfill. Promptly after the Effective Date, and except as set forth in Section 6.3, PSE&G shall, at PSE&G's cost, test, verify or prove the location as suitable for the construction of the Solar Facility, as determined by PSE&G in its sole discretion. Lessor will cooperate in any reasonable manner requested by PSE&G in connection with the foregoing. PSE&G shall promptly advise Lessor if the Leased Premises is not suitable for the Solar Facility. If PSE&G deems the site suitable, PSE&G shall perform all site preparation work on the Leased Premises.

Article 3. TERM

3.1. Term.

(a) Subject to the Conditions Precedent, the Lease shall commence on the Effective Date and terminate the first to occur of (i) the Scheduled Expiration Date and (ii) the date on which the Lease is terminated in accordance with its terms ("Term"), subject to Section 3.1(b).

(b) Provided no Event of Default with respect to PSE&G exists, PSE&G shall have the right to extend the Term for up to two (2) periods of five (5) years each, on all the same terms and conditions hereof, and Rent shall continue to increase annually in accordance with Exhibit C. To exercise the option, PSE&G shall notify Lessor at least three (3) months prior to the end of the Term.

3.2. Rent.

(a) Rent shall be payable quarterly in arrears beginning on the tenth (10th) day of the fourth (4th) month following the COD. The first rental payment shall be pro-rated to account for a partial month (if any) of commercial operation. The Rent for such period shall be set forth on Exhibit C.

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

3.3. **Removal of Solar Facility.** Except as set forth in Section 3.4, PSE&G shall remove the Solar Facility (except for below-grade foundations or concrete piers/footings) from the Leased Premises and restore the Leased Premises to its condition prior to the Lease as nearly as reasonably practicable, wear and tear excepted, within twelve (12) months from the end of the Term; provided, however, PSE&G shall not be required to correct or remediate any condition created therein by Lessor or any third party. PSE&G’s obligations under this Section 3.3 are collectively referred to herein as the “Restoration Obligations.”

3.4. **Purchase Option.** Lessor shall have the option to purchase the Solar Facility at the end of the Term upon such price and terms to be mutually agreed upon by the Parties. To exercise the option, Lessor shall, at least twelve (12) months prior to the expiration of the Term, deliver written notice to PSE&G setting forth the proposed purchase and sale price. The option will automatically expire if the Lessor fails to give a timely notice. If the Parties are unable to reach a definitive purchase and sale agreement prior to the end of the Term, the purchase option shall expire and PSE&G shall remove the Solar Facility in accordance with Section 3.3. If Lessor exercises its option to purchase, PSE&G shall be released from all Restoration Obligations hereunder and Lessor shall be responsible for compliance with all Laws associated with the transfer, ownership, operation, maintenance and decommissioning of the Solar Facility.

Article 4. OWNERSHIP OF IMPROVEMENTS

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

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

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

Article 5. USE, MAINTENANCE AND ALTERATIONS

5.1. **Permitted Uses.** PSE&G may use the Leased Premises to conduct the Work and all activities reasonably related to the purposes of the Lease. In addition, PSE&G may use and occupy the Lessor Property in a manner that does not materially interfere with Lessor's use of the Lessor Property for (a) the conduct of the Work, and (b) any other reasonably related and legally permitted use. Lessor shall not create or permit, on the Lessor Property or any other property owned or controlled by Lessor or its affiliate, any interference with PSE&G's exclusive and continuous right to unobstructed direct sunlight for operation of the Solar Facility. Prior to commencing the construction of the Solar Facility, PSE&G shall provide to Lessor a written plan(s) for the same in sufficient detail to enable the Lessor to reasonably assess the impact of the Solar Facility on the landfill located on the Leased Premises and on the closure or post-closure care and maintenance of such landfill, including the Closure or Post-Closure Improvements. Lessor shall have the right within twenty (20) days of receipt of such plan(s) to provide written comment to PSE&G with respect to any such impact. Failure by Lessor to submit such comments to PSE&G within such twenty (20) day period shall be deemed a waiver by Lessor of its right to comment under this Section 5.1.

5.2. **Reservation of Rights.** Lessor reserves a right of access to the Leased Premises for the purpose of (a) owning, operating and maintaining the Lessor Facilities, and (b) exercising its rights and remedies under this Lease. Lessor shall exercise such right of access in a manner that does not interfere with PSE&G's right to use the Leased Premises or obstruct direct sunlight to the Solar Facility. Such right of access may be exercised by reasonable written notice to PSE&G unless exigent circumstances require Lessor to immediately access the Leased Premises.

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

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

5.5. Compliance with Laws.

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

(b) Except as specifically set forth in Section 5.5(d) hereof, Lessor shall comply at its sole cost and expense with all applicable Environmental Laws pertaining to the Leased Property, including all such laws and regulations relating to or requiring closure and post-closure care or maintenance or other investigation or remediation of the landfill located on the Leased Premises and shall apply for, obtain, maintain in full force and effect and comply with all Environmental Permits in respect of such closure or post-closure care or maintenance or other investigation or remediation work. Without limiting the generality of the foregoing, Lessor shall (i) if and to the extent required under Environmental Laws, prepare, secure NJDEP approval of, implement and modify as required a Closure and/or Post-Closure Plan for such landfill so as to obtain a written approval of the NJDEP of the implementation of such plan or plans and obtain from the New Jersey Board of Public Utilities or NJDEP, if the same is provided by either agency, a written determination that the landfill on the Leased Premises is a properly closed sanitary landfill in accordance with N.J.S.A. 48:3-87(t); (ii) perform all assessment, investigation, sampling, monitoring, abatement, encapsulation, cleanup, removal and remediation of Contamination on, at, under or emanating from the Leased Premises required under Environmental Laws or the NJDEP, including all such work or actions required for closure and post-closure care and maintenance of the landfill on the Leased Premises, so as to obtain a Response Action Outcome issued by a Licensed Site Remediation Professional, a No Further Action Letter issued by the NJDEP (as such terms are hereinafter defined) or other written approval of the NJDEP stating that all obligations for assessment, investigation, sampling, monitoring, abatement, encapsulation, cleanup, removal, remediation, or closure have been satisfied; (iii) operate, maintain, repair and replace, as the case may be, all Closure or Post-Closure Improvements, perform all groundwater or leachate remediation or monitoring, maintain all required records or logs, perform all biennial certifications and post and maintain in full force and effect all required financial assurances relating to the closure or post-closure care and maintenance of the landfill on the Leased Premises; (iv) in the event the NJDEP or other governmental authority at any time during the Term of this Lease requires any additional investigative, remedial or closure or post-closure care or maintenance actions or work on the Leased Premises pursuant to Environmental Laws, or any modification of or addition to the Closure and Post-Closure Improvements, Lessor shall promptly perform, install and operate the same; (v) prepare, obtain NJDEP approval of, record and thereafter maintain in full force and effect any Deed Notice or modification to the same required under Environmental Laws for the closure and post-closure care of the landfill present on the Leased Premises and the installation, operation and maintenance of Closure and Post-Closure Improvements, and/or to construct, operate and maintain the Solar Facility on the Leased Premises; and (vi) in its own name apply for, obtain, maintain in full force and effect, and comply with any minor or major landfill disruption permit or approval required under Environmental Laws to perform the Engineering Review pursuant to Section 15.1 hereof, and/or to construct, operate and maintain the Solar Facility on the

Leased Premises. Lessor shall perform, or cause its employees, contractors or agents to perform, all actions necessary to comply with the provisions of this Section 5.5(b) in a good and workmanlike manner in accordance with all applicable Environmental Laws (or permits issued thereunder) and so as not to interfere with PSE&G's use of the Leased Premises as contemplated by this Lease.

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

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

(e) Notwithstanding the provisions of Section 5.5(d), PSE&G shall have no obligation to remove or treat any Hazardous Materials on, under or migrating from the Leased Premises that were not stored, released, spilled or discharged to or on the Leased Premises by PSE&G ("Non-PSE&G Hazardous Materials"), or to treat, restore or replace any soil, water or other portions of the Environment to any condition other than that existing immediately prior to such release, spill or discharge of PSE&G Hazardous Materials. If, in the performance of its obligations under Section 5.5(d), PSE&G should perform any removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials, either (i) because PSE&G is required to do so by Environmental Laws or pursuant to any valid orders, directives, notices or agreements issued by or entered into with a Government Entity or (ii) because it is not reasonably practicable or feasible to perform its obligations under Section 5.5(d) without performing such additional actions, then Lessor shall, within twenty (20) Business Days of its receipt of an invoice from PSE&G, reimburse PSE&G for any costs, expenses or other amounts reasonably incurred by PSE&G in performing such additional actions; provided, however, PSE&G shall not perform any removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials without giving Lessor at least thirty (30) Days' (unless more timely action is required by order of any applicable Governmental Entity) prior notice of the condition or the order, directive, notice or agreement giving rise to the necessity for such removal,

treatment, restoration or replacement of Non-PSE&G Hazardous Materials, specifying the particulars thereof, and permitting Lessor a reasonable opportunity to perform such removal, treatment, restoration or replacement of Non-PSE&G Hazardous Materials on PSE&G's behalf (at Lessor's sole cost and expense).

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

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

(h) Should the termination of this Lease, any sale or conveyance of the Leased Premises by the Lessor during the term of the Lease, or any other transaction or event occurring during the term of the Lease and involving "closing operations" or a "change in ownership" or "transferring of ownership or operations" of Lessor or the Leased Premises, subject the Leased Premises to the compliance requirements of the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq., and the rules and regulations promulgated thereunder ("ISRA"), Lessor shall be solely responsible to comply therewith (except to the extent such compliance with ISRA is caused or necessitated by the release, spillage or discharge of PSE&G Hazardous Materials to, on, in, under or migrating from the Leased Premises) and Lessor shall prior to the termination of the Lease, sale, conveyance or other transaction or event: (i) obtain a Response Action Outcome issued by a Licensed Site Remediation Professional or a No Further Action Letter issued by the NJDEP; (ii) submit to the NJDEP a Remediation Certification, together with an estimate of the cost of remediation prepared or certified by a Licensed Site Remediation Professional, obligating Lessor to comply with the requirements or ISRA, or (iii) obtain other such approvals from the NJDEP, reasonably satisfactory to PSE&G, demonstrating that Lessor has complied with the requirements of ISRA. In the event Lessor issues a Remediation Certification in order to comply with this Section 5.5(h), Lessor shall post and maintain in full force and effect a Remediation Funding Source in form and amount required by ISRA and shall thereafter promptly and diligently take all actions required under ISRA to obtain a Response Action Outcome from a Licensed Site Remediation Professional or a No Further Action Letter from the NJDEP. Notwithstanding the

provisions of Section 13.2 and the exception set forth herein, Lessor shall defend, indemnify and hold harmless PSE&G for any costs, expenses, losses or damages (including, without limitation, attorneys' fees and other costs of defense, fines, penalties and natural resource damages) arising from or associated with compliance or any failure to comply with ISRA. In the event Lessor believes that compliance with ISRA is not required at or by reason of the termination of the Lease, sale or conveyance of the Leased Premises or other transaction or event, Lessor shall supply to PSE&G a written opinion of a licensed New Jersey attorney, in form and substance reasonably satisfactory to PSE&G, that compliance with ISRA is not required. The terms change in ownership, transferring ownership or operations, closing operations, Response Action Outcome, No Further Action Letter, Licensed Site Remediation Professional, Remediation Certification, and Remediation Funding Source, as used herein, shall have the meanings given to them under ISRA and/or N.J.A.C. 7:26B-1.3 or N.J.A.C. 7:26B-3.4.

5.6. **Security.** PSE&G shall be entitled to install such security measures as it deems advisable or necessary to control and restrict access to the Leased Premises, Solar Facility and Improvements including fencing with locked gates and remote monitoring equipment.

Article 6. UTILITIES AND SERVICES

6.1. **Electricity.** PSE&G shall have the right to arrange for electrical service as may be needed or required in connection with the installation, construction and long-term illumination and monitoring of the Solar Facility.

6.2. **Storm Water.** Subject to the Lessor's obligations pursuant to Section 5.5(b) of this Lease, PSE&G shall comply with all applicable Law with respect to the treatment of storm water at the Leased Premises.

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

6.4. **Coordination.** Lessor shall coordinate with PSE&G and its Contractor (as such term is hereinafter defined) regarding access to the Leased Premises and scheduling construction activities.

Article 7. FORCE MAJEURE

7.1. **Force Majeure.** If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations (other than the obligation to make payments that are due and outstanding) under this Lease, such Party shall give notice orally to the other Party as soon as reasonably practicable, followed within five (5) Business Days thereafter by a written notice setting forth, in reasonable detail, the cause or causes constituting such Force Majeure. The obligations of the Party affected by such Force Majeure (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent made necessary, and for no longer than is required, by the cause or causes constituting such Force Majeure. The other Party, within ten (10) Business Days after

receipt of such written notice, may give written notice that it disputes the existence of Force Majeure.

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

7.3. **Continuance of Force Majeure.** If an event of Force Majeure affecting performance by either Party persists for a continuous period of more than three (3) months, the other Party shall have the right, upon not less than one (1) month's prior written notice, to terminate this Lease and the obligations of the Parties hereunder, except those rights and obligations specifically stated to continue after termination.

Article 8. CONDEMNATION; CASUALTY

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

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

Article 9. LIMITATION OF REMEDIES AND LIABILITY

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

AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED.

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

Article 10. TAXES

10.1. **Real Property Taxation.** The Parties agree that, even if the Solar Facility or portions thereof are temporarily attached or affixed to or incorporated in or made part of the Leased Premises, same shall not be or become fixtures or otherwise part of the real property interests. The Solar Facility is and the Parties intend: (a) the Solar Facility will, at all times, be personal property and not a “fixture” as defined by Law; (b) to the extent the Solar Facility may be connected to the real property, the Solar Facility is not intended to be connected permanently to the real property and may be removed or disconnected without materially damaging the Solar Facility or the real property; and (c) the real property’s prior use and purpose will not be changed by the Solar Facility or by any temporary connection of Solar Facility to the real property. The Parties further acknowledge the Solar Facility is not intended to be included in the assessed valuation of the Lessor Property for real property taxation purposes.

10.2. **PSE&G’s Obligations.** PSE&G shall be responsible for and pay directly to the taxing authority all personal property taxes, possessory interest taxes, business and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, bonds, levies, fees and charges of any kind assessed, levied, charged, confirmed, or imposed by any Governmental Entity due to PSE&G’s ownership and use of the Solar Facility.

10.3. **Lessor’s Obligations.** Lessor shall be responsible for and pay all real estate taxes, assessments or other charges imposed by any Governmental Entity relating to the Lessor Property and Lessor Facilities.

Article 11. REPRESENTATIONS AND WARRANTIES

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

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Lease;

(b) the execution, delivery and performance of this Lease are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its charter, organizational or governing documents or any contract to which

it is a party or by which any of its properties is bound or any Law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination of any Governmental Entity applicable to it;

(c) this Lease constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;

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

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

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

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

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

11.3. **Environmental Condition.** Lessor represents and warrants to PSE&G that: (a) Lessor is in compliance with all requirements of Environmental Laws and of the NJDEP with respect to the investigation and remediation of Contamination on, at, under or emanating from the Leased Premises and the ownership, operation, closure and post-closure care and maintenance of the landfill located on the Leased Premises; (b) Lessor has obtained and is in compliance with all Environmental Permits in connection with the ownership, occupancy, operation or use of the Leased Premises including all such Environmental Permits required or necessary for the ownership, operation or use of the landfill present on the Leased Premises or the closure and post-closure care or maintenance thereof and the construction, installation, operation, maintenance, repair and replacement of the Closure or Post-Closure Improvements; (c) no Hazardous Substances are present in the soil placed above the landfill cap present on the Leased Premises; (d) there are no asbestos-containing materials present in, on, at or under the Leased Premises; (e) Lessor has not received any legal process, complaint, demand, directive, notice, notice of violation, citation, deficiency letter, request for information or other communication from any governmental or non-governmental body or person alleging any violation of Environmental Laws by Lessor, or any release or discharge of Hazardous Substances or Contamination on, at, under or emanating from the Leased Premises not already addressed in full

by completed or on-going closure or post-closure care or maintenance or other remediation activities, or any damage to disturbance or impairment of the Closure or Post-Closure Improvements, or imposing any requirement to perform any additional investigative or remedial actions or other closure or post-closure care or maintenance work to address Contamination on, or, under or emanating from the Leased Premises or to add to or modify the Closure or Post-Closure Improvements; (f) Exhibit E hereof is a listing of all reports, assessments, workplans, and sampling or monitoring data in Lessor's possession, custody or control referring or relating to the presence of Contamination on, at, under or emanating from the Leased Premises, the closure or post-closure care or maintenance of the landfill present on the Leased Premises and/or the design, approval, construction, operation, performance and maintenance of the Closure and Post-Closure Improvements and Lessor has provided PSE&G with copies of all such documents.

11.4. **Suitability for Solar Facility.** The zoning classification of the Lessor Property is _____, which is compatible with the construction and operation of the Solar Facility. The Lessor Property comprises a total of _____ acres, of which approximately ____ is suitable for Solar Facility, for an estimated solar capacity of ____ kilowatts. There is no condition or restriction affecting the Lessor Property (including the use of the property for landfill purposes and the existence and maintenance of any Closure or Post-Closure Improvements) that could be expected to restrict or adversely affect (a) the suitability of the Leased Property for the Solar Facility or (b) the exposure of the Leased Property to sunlight.

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

Article 12. ADDITIONAL COVENANTS

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

12.2. Confidentiality.

(a) In the course of performing its obligations under this Lease, each Party may obtain non-public, confidential or proprietary information regarding (i) the Solar Facility (in the case of Lessor) or the Lessor Facilities (in the case of PSE&G), and (ii) the other Party and its Affiliates. Such information that a Party receives from the other Party, whether oral, written or in any other form and whether furnished before or after the Effective Date, together with any analyses or documents prepared by the recipient Party that contains or otherwise reflects such information, is hereinafter referred to as

“Confidential Information.” In addition, the provisions of this Lease relating to pricing, services to be provided by Lessor and other economic terms shall also constitute “Confidential Information” as to both Parties.

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

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

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

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

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

(g) PSE&G may disclose any information related to this Lease upon the request of the NJBPU or any Governmental Entity having jurisdiction over PSE&G without notice to Lessor, and such disclosure shall not be a breach of this Lease. PSE&G will request confidential treatment of such disclosure, but can make no assurance that such request will be honored.

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

Article 13. INDEMNIFICATION

13.1. Indemnification by Lessor. Lessor shall Indemnify PSE&G and each PSE&G Representative (collectively, the “PSE&G Indemnified Parties”) against any and all actions, claims, demands, costs and expenses, including reasonable attorneys’ fees and expenses for the defense thereof, arising from: (a) the undertaking of any repairs, alterations or modifications to the Lessor Facilities by Lessor, (b) any willful or negligent act of Lessor, its agents, contractors, servants, employees, customers or invitees, in or about the Lessor Property, (c) the violation or alleged violation of any Environmental Laws or Environmental Permits by Lessor, its Representatives or any business invitee of Lessor, or the presence or release of Hazardous Materials (other than PSE&G Hazardous Materials) on, in, under or migrating from the Lessor Property or Leased Premises; and (d) the breach by Lessor of any of the covenants of Lessor set forth in Section 5.5 or the representations and warranties set forth in Section 11.3 hereof. In case of any action or proceeding brought against a PSE&G Indemnified Party by reason of any such claim, upon notice from PSE&G, Lessor covenants to defend such action or proceeding by counsel reasonably satisfactory to PSE&G.

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

13.3. Procedure.

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

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

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

13.4. **Payment.** Upon a determination that an Indemnifying Party is liable for Indemnification under Section 13.1 or 13.2 (by admission of the Indemnifying Party, agreement of the Indemnifying Party and Indemnified Person, or completion of the procedures set forth in Section 13.3), the Indemnifying Party shall pay to the Indemnified Person, within ten (10) Days after such determination, the amount of the Loss Indemnified thereby. Upon the payment in full of any such Loss, the Indemnifying Party making such payment shall be subrogated to the rights of the Indemnified Person against any other Person with respect to the subject matter of such Loss and of any Claim or Proceeding relating thereto.

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

Article 14. EVENTS OF DEFAULT AND REMEDIES

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

- (a) any failure by either Party to pay any amount due under this Lease and not reasonably in dispute when due and such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such Party by the other Party; or
- (b) any representation or warranty made by either Party in this Lease shall at any time prove to be false or misleading in any material respect, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within twenty (20) Business Days after such Party became aware that it was false, incorrect or breached in any material respect (or within such longer period of time, not to exceed three (3) months, as is necessary for such Party with the exercise of diligence to cure such failure, if such failure is susceptible to being made true but cannot be cured with the exercise of diligence within such twenty (20) Business Day period, and if such Party commences within such twenty (20) Business Day period and thereafter diligently and in good faith prosecutes the curing of such failure) and (ii) such cure removes any adverse effect on the other Party of such fact, circumstance or condition being otherwise than as first represented; or
- (c) any failure by either Party to perform any obligation set forth in this Lease (other than obligations covered by Section 14.1(a) or (b) as a separate Event of Default) which is not excused by Force Majeure or the other Party’s failure to perform and such failure is not cured within twenty (20) Business Days after written notice thereof is given to such Party by the other Party (or within such longer period of time, not to exceed three (3) months, as is necessary for such Party with the exercise of diligence to cure such failure, if such failure is susceptible to cure but cannot be cured with the exercise of diligence within such twenty (20) Business Day period, and if such Party commences within such twenty (20) Business Day period and thereafter diligently and in good faith prosecutes the curing of such failure); provided it shall be an Event of Default if Lessor fails to cure a breach of Section 2.2 within five (5) Days after receipt of written notice thereof; or
- (d) either PSE&G or Lessor (i) becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due; (ii) generally is not paying its debts as they become due; (iii) has a receiver, trustee or custodian appointed for, or to take possession of, all or substantially all of the assets of such Person, either in a proceeding brought by such Person or in a proceeding brought against such Person and such appointment is not discharged or such possession is not terminated within ninety (90) Days after the effective date thereof or such Person consents to or acquiesces in such appointment or possession; or (iv) files a petition for relief under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar Law (collectively, the “Applicable Bankruptcy Law”) or an involuntary petition for relief is filed against such Person under any Applicable Bankruptcy Law and such involuntary petition is not dismissed within ninety (90) Days after the filing thereof or an order for

relief naming such Person is entered under any Applicable Bankruptcy Law or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by such Person.

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

14.2. Remedies Upon an Event of Default.

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

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

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

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

(e) If PSE&G is the Non-Defaulting Party, its damages shall include the income lost by PSE&G during the periods for which any portion of the Solar Facility is out of service, calculated using the tables set forth on Exhibit F hereto (“Lost Energy Damages”), based on a proportionate basis taking into account both the period of any outage and the percentage of the Solar Facility affected, including for any terminated portion of the Term.

Article 15. CONDITIONS

15.1. **Conditions.** It is understood and agreed this Lease and the ability of PSE&G to use the Leased Premises for the Solar Facility is expressly contingent upon PSE&G’s or its contractor’s obtaining and maintaining all Permits that may be required by any Governmental Entity including the New Jersey Board of Public Utilities and any local zoning authority, and a satisfactory environmental and engineering review of the Leased Premises, including performance of any soil, surface water or groundwater sampling or examination of any Closure or Post-Closure Improvements (“Engineering Review”). Lessor shall cooperate with PSE&G’s effort to obtain and maintain such Permits and Engineering Review and shall take no action that

could have a material adverse effect upon the status of the Leased Premises with respect to the Permitted Use or PSE&G's ability to obtain and maintain such Permits and Engineering Review. PSE&G shall have the right to terminate this Lease at any time and at no cost or expense if (a) any application for a Permit is finally rejected, (b) any Permit issued to PSE&G contains an unreasonable term or condition or is canceled or modified in a manner that has an adverse impact on PSE&G, expires, lapses, or is otherwise withdrawn or terminated, (c) PSE&G reasonably determines that such Permit may not be obtained in a timely manner, (d) PSE&G reasonably determines within six (6) months of the Effective Date that any Engineering Review is unsatisfactory, (e) PSE&G reasonably determines that the Leased Premises are no longer technically compatible for its use, or (f) PSE&G determines that it will be unable to use the Leased Premises for the Permitted Use. PSE&G shall deliver a written notice of termination to Lessor and shall be effective upon the mailing of such notice by PSE&G, or upon such later date as designated by PSE&G in such notice. Upon such termination, this Lease shall be of no further force or effect and all rights, duties and obligations of Lessor and PSE&G under this Lease shall terminate. Notwithstanding anything to the contrary contained herein, this Lease and the obligations of the Parties hereunder are contingent upon the full execution and delivery by PSE&G and the applicable contractor of a contract for the installation of the Solar Facility ("Contractor").

Article 16. GENERAL PROVISIONS

16.1. Assignment and Subletting.

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

obligation or liability hereunder upon the effective date of the Assignment, without the need for consent from the other Party; provided in each case the assignee has assumed the obligations of the assigning Party as provided in the preceding sentence. Any Party making an Assignment pursuant to this Section 16.1 shall promptly notify the other Party thereof and furnish such Party a copy of such Assignment. Nothing contained herein shall prevent a Party from designating Representatives to act on its behalf hereunder, but a Party shall be fully responsible for the acts or omissions of its Representatives.

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

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

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

if to Lessor:

With copy to:

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

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

or such other address as a Party may designate to the other Party by notice given as provided herein. Such notices shall be effective (i) if delivered in person or by courier, upon actual receipt

by the intended recipient, (ii) if sent by overnight delivery or mailed, upon the date of delivery or refusal thereof as shown by the confirmation statement or return receipt therefor.

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

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

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

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

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

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

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

16.7. **Effect of Termination.** If this Lease is terminated, this Lease shall become void and of no further force or effect (except for the provisions of Sections 3.3, 5.5 and 12.2, Article 13, Article 14 and Article 16, all of which shall survive such termination and continue in full force and effect); provided, however:

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

(b) if either Party owes any amount to the other Party at the time this Lease is so terminated (regardless of whether such first Party is in breach of this Lease), such first Party shall pay such amount to such second Party within five (5) Business Days of such termination.

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

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

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Executed by the Parties as of the Effective Date.

LESSOR: _____

By: _____

Name:

Title:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: _____

Name:

Title:

DRAFT

EXHIBIT A

LEASED PREMISES

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

In addition, the Leased Premises also include:

- A. Construction Lay-Down. An exclusive leasehold interest in the Lessor Property located _____ for use by PSE&G to temporarily stage, lay-down and store materials and equipment for the use of PSE&G, its employees, agents, contractors and their employees, including parking, in connection with the Work.

- B. Interconnection. An exclusive easement over the Lessor Property necessary to (a) install, maintain and operate an electrical conduit from the Solar Facility to the point of interconnection at _____, and (b) install a new switchgear/meter enclosure and related ancillary equipment.

- C. Access. A non-exclusive, general right of access over existing vehicular and pedestrian access roads and areas as are reasonably necessary and appropriate for use by PSE&G and its Representatives for vehicular and pedestrian ingress to and egress from the Leased Premises in connection with conducting the Work and any other use permitted under the Lease. Emergency access will be allowed at all times. Otherwise, routine construction, operation and maintenance will be allowed with 24 hours' notice.

EXHIBIT B

Permitted Encumbrances

DRAFT

EXHIBIT C

RENT

1. Rent for the period beginning with the COD shall be calculated as follows:
 - a. After the final New Jersey Board of Public Utilities (NJBPU) inspection of the Solar Facility, the estimated annual energy production of the as-built Solar Facility (in AC kilowatt hours) shall be determined in accordance with a methodology consistent with the NJBPU's SREC certification review process, i.e., PV Watts v.1; and
 - b. such estimated annual energy production (in kWh) shall be multiplied by [_____] (the "Multiplier"). The Multiplier shall be increased by two and one-half percent (2.5%) as of each anniversary of the COD during the Term.
2. PSE&G shall pay the rent amount due and owing on or before the tenth (10th) day of the month following the end of a quarterly billing period. If such amount remains unpaid for ten (10) days thereafter, PSE&G shall pay a late charge equal to five percent (5%) of the late payment. In addition, all amounts not paid within fifteen (15) days after notice of nonpayment by Lessor to PSE&G due shall bear interest at a rate the date same was originally due (without regard to any grace period) at a rate equal to the greater of: (a) five percent (5%) per annum or (b) two percent (2%) plus the then-current Wall Street Journal Prime Rate; but in neither of such events shall such interest exceed the maximum permitted by applicable law.

[SAMPLE ONLY – to be revised based on actual completed system size and agreed lease payment rate]

<u>Year</u>	<u>Lease Payment Rate</u>	<u>Annual Rent</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

NOTES:

1. Payments to be made quarterly in arrears, beginning with the first quarter following the start of commercial operations.
2. Actual annual payment in Year 1 to be determined after system completion, based on completed system size.
3. Payments in Years 2 and following are based on payment in Year 1 plus an annual escalator of 2.5%.
4. FINAL SYSTEM PRODUCTION AND PAYMENT SCHEDULE TO BE CALCULATED AT PROJECT COMPLETION AND INSPECTION USING THE LOCATION OF NEWARK, NJ, AND BPU-APPROVED DERATE FACTOR.

EXHIBIT D

Insurance

I. Insurance Requirements for Lessor:

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

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

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

c. Commercial Automobile Liability Insurance, with limits of liability not less than \$1,000,000 combined single limit.

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

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

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

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

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

II. Insurance Requirements for PSE&G:

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

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

2. PSE&G has the right to self-insure any of the coverages set forth above or to provide such coverages through insurance provided by PSE&G's contractors. If actual insurance policies are maintained in lieu of PSE&G's self-insurance, the Lessor shall be added as an additional insured under the coverages set forth in clauses A and D below.

Minimum Scope and Limits of PSE&G's Insurance

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

B. Workers' Compensation: statutory limits; Employers Liability Insurance: \$1,000,000 each accident and in the aggregate.

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

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

E. All-Risk Property Insurance covering repair and replacement of PSE&G's Improvements.

EXHIBIT E
ENVIRONMENTAL REPORTS

DRAFT

EXHIBIT F

LOST ENERGY DAMAGES

[SAMPLE ONLY: to be revised based on actual system size]

Year of Term	Daily Amount / Peak	Daily Amount / Non-Peak
Year 1	\$2,500	\$1,900
Year 2	\$2,400	\$1,900
Year 3	\$2,300	\$1,800
Year 4	\$2,300	\$1,800
Year 5	\$2,200	\$1,800
Year 6	\$2,200	\$1,700
Year 7	\$2,100	\$1,700
Year 8	\$2,100	\$1,600
Year 9	\$2,000	\$1,600
Year 10	\$2,000	\$1,600
Year 11	\$1,900	\$1,500
Year 12	\$1,900	\$1,500
Year 13	\$1,800	\$1,500
Year 14	\$1,800	\$1,400
Year 15	\$1,800	\$1,400
Year 16	\$520	\$410
Year 17	\$530	\$420
Year 18	\$540	\$420
Year 19	\$540	\$430
Year 20 +	\$550	\$430

NOTES:

Example calculation based on 1 MW (DC) Solar Facility

For purposes hereof:

Peak shall mean the months of April through and including September.

Non-Peak shall mean the months of October through and including March.

The amounts in the foregoing schedule represent the daily Lost Energy Damages applicable to the entire Solar Facility.

Example:

Lessor requires removal affecting 2% of the Solar Facility for 2 days in August of year 2

\$2,400 loss / day (peak) x 2% system affected = \$48/day

x 2 days = \$96 Lost Energy Damages owed PSE&G from Lessor

EXHIBIT G

MEMORANDUM OF LEASE AGREEMENT

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

NAME OF LESSOR:

ADDRESS OF LESSOR:

NAME OF LESSEE: Public Service Electric and Gas Company

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

DATE OF SURFACE LEASE:

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

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

DESCRIPTION OF PROPERTY SET FORTH IN SAID LEASE AGREEMENT:

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

IN WITNESS WHEREOF, Lessor and Lessee have caused this Memorandum of Lease Agreement to be signed as of the day and year first above written.

Public Service Electric and Gas Company

By: _____

Name:

Title:

[LESSOR]

By: _____

Name:

Title:

EXHIBIT H

Form of Subordination Agreement

Date: _____

Lender: _____

Lessor: _____

Lessee: _____

Property: _____

Mortgage: _____

Lease: _____

Premises: _____

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

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

b. Lender will not name Lessee as a party in any action or proceeding to foreclose the Mortgage or to exercise any of its other rights under the Mortgage or under law; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed under seal as of the date first above written.

LENDER:

By: _____
Name:
Title:

LESSOR:

By: _____
Name:
Title:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: _____
Name:
Title:

DRAFT