

THE PORT AUTHORITY OF NY & NJ
PROCUREMENT DEPARTMENT
4 WORLD TRADE CENTER
150 GREENWICH STREET, 21ST FL.
NEW YORK, NY 10007

2/23/2018

ADDENDUM # 2

To prospective Proposer(s) on RFP # 52308 – Solar “Carport” Photovoltaic (PV) Power Generating System at the Port Authority of New York & New Jersey’s Stewart International Airport:

RFP due March 22, 2018 at 2:00PM

I. CHANGES/MODIFICATIONS

- A. The attached Power Purchase Agreement (PPA) is hereby made a part of this RFP.

This communication should be initialed by you and annexed to your Proposal upon submission.

In case any Proposer fails to conform to these instructions, its Proposal will nevertheless be construed as though this communication had been so physically annexed and initialed.

THE PORT AUTHORITY OF NY & NJ
Selene Ortega, Manager
Commodities and Service Division

PROPOSER'S FIRM NAME: _____

INITIALED: _____

DATE: _____

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO
Richard Grehl, WHO CAN BE REACHED AT (212) 435-4633 or at rgrehl@panynj.gov.

Addendum # 2

POWER PURCHASE AGREEMENT

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POWER PURCHASE AGREEMENT

PART I – CONTRACT SPECIFIC TERMS AND CONDITIONS

GENERAL

This Solar Power Purchase Agreement (“Agreement” or “PPA” or “Contract”) is made and entered into as of **MONTH DAY, YEAR** (“Effective Date”) between PROVIDER NAME, PROVIDER STREET, CITY, STATE ZIP, (“Provider” or “Contractor”) and **The Port Authority of New York and New Jersey** (“Port Authority,” “Authority” or “Host”), a body corporate and politic created by a Compact between the States of New York and New Jersey with the consent of the Congress of the United States (together with Provider, each, a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, on MONTH DAY, YEAR, Host issued a Request for Proposals (“RFP”), Number 52308, (the “Solicitation”) soliciting proposals for the installation of a solar photovoltaic system at STEWART INTERNATIONAL AIRPORT via a power purchase agreement; and

WHEREAS, on MONTH DAY, YEAR, Provider submitted a response to the Solicitation; and

WHEREAS, on MONTH DAY, YEAR, Host awarded Provider a contract to perform the services requested in the Solicitation; and

WHEREAS, Provider intends to furnish, install, finance, own, operate and maintain a photovoltaic solar power electric generation system (“System”) at the Premises, as described below, for the purpose of providing electric energy output from the System (“Solar Services”) to Host as more particularly described in Part II – Scope of Work and Specifications (the “Project,” “Scope of Work” or “Work”), and subject to the terms and conditions provided herein and in the Solar Facility License (“License”), attached hereto as Exhibit B; and

WHEREAS, Provider desires to sell to Host, and Host desires to purchase from Provider, all of the Solar Services generated by the System during the Term in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

- 1.1 **Definitions.** In addition to other terms specifically defined elsewhere in the Agreement, the following words and phrases shall be defined as follows:

- (a) “Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.
- (b) “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.
- (c) “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- (d) “Assignment” has the meaning set forth in Section 13.
- (e) “Standard Contract Terms and Conditions” means those general terms and conditions attached as Attachment D of the RFP.
- (f) “Bankruptcy Event” means with respect to a Party, that either:
 - (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or
 - (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

- (g) “BES” means Host’s existing building electrical systems that are owned, operated, maintained or controlled by the Host, including the interconnection of these systems with the Local Electric Utility.
- (h) “Business Day” means any day other than Saturday, Sunday or any other holiday on which the Port Authority is closed for business pursuant to the Section titled “Holidays” of the Standard Contract Terms and Conditions.
- (i) “Commercial Operation Date” has the meaning set forth in Section 3.3(b).
- (j) “Commercial Operation Deadline” means the date which is three hundred and sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event, breach of the Agreement by Host, or other action or inaction on the part of Host or any other third party occurring after the Effective Date and prior to the Commercial Operation Date.
- (l) “Confidential Information” has the meaning set forth in Section 15.1.
- (k) “Consent and Agreement” means a consent and agreement as will be provided by the Host.
- (l) “Contractor” shall be synonymous with “Provider.”
- (m) “Dispute” has the meaning set forth in Section 18.5.
- (n) “Disruption Period” has the meaning set forth in Section 4.3(b).
- (o) “Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term but does not include the Purchase Date, as defined herein.
- (p) “Effective Date” has the meaning set forth in the introductory paragraph above.
- (q) “Environmental Financial Attributes” shall mean, without limitation, each of the following financial rebates and incentives created under state, local or federal law that are in effect as of the Effective Date or may come into effect in the future: (i) renewable energy credits including, but not limited to, the New York State Energy Research and Development Authority incentives, and accelerated depreciation (collectively, “Allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of

energy generated by the System; and (ii) all reporting rights with respect to such Allowances.

- (r) “Estimated Annual Production” means the Estimated Annual Production for the applicable year of the Term as set forth by the Provider in the Schedule 3 Cost Proposal Form.
- (s) “Expiration Date” means the date on which the Agreement terminates by reason of expiration, cancellation or termination of the Term.
- (t) “Fair Market Value” has the meaning set forth in Section 2.4.
- (u) “Financing Party” means, as applicable, (i) any Person (or his agent) from whom Provider (or an Affiliate of Provider) leases the System or (ii) any Person (or his agent) who has made or will make a loan to or otherwise provide capital to Provider (or an Affiliate of Provider) with respect to the System.
- (v) “Force Majeure Event” has the meaning set forth in Section 10.1.
- (w) “Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.
- (x) “Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.
- (y) “Host” has the meaning set forth in the introductory paragraph. “Host” shall be synonymous with the “Port Authority.”
- (z) “Host Default” has the meaning set forth in Section 11.2(a).
- (aa) “Initial Term” has the meaning set forth in Section 2.1.
- (bb) “Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.
- (cc) “Invoice Date” has the meaning set forth in Section 6.2.
- (dd) “kWh Rate (base)” means the price per kWh set forth in Schedule 3.
- (ee) “Liens” has the meaning set forth in Section 7.1(e).

- (ff) “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Premises.
- (gg) “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).
- (hh) “Meter” has the meaning set forth in Section 4.2.
- (ii) “Option Price” has the meaning set forth in Section 2.3.
- (jj) “Party” or “Parties” has the meaning set forth in the introductory paragraph above.
- (kk) “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- (ll) “Point of Delivery” means the physical location, as set forth on Schedule 1, attached hereto, where the System connects to the Local Electric Utility grid, at which point custody and control of electricity is transferred from Provider to Host.
- (mm) “Premises” or “Site” means the premises described in Part II. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Part II.
- (nn) “Provider” has the meaning set forth in the introductory paragraph above. “Provider” shall be synonymous with “Contractor.”
- (oo) “Provider Default” has the meaning set forth in Section 11.1(a).
- (pp) “Public Records Access Policy” the Port Authority’s policy for access to public records, which can be found at <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>.
- (qq) “Purchase Date” means the last day of the Term.
- (rr) “Purchase Option” has the meaning set forth in Section 2.3.

- (ss) “Renewable Energy Credits” means all certificates (including Tradable Renewable Certificates), Green-e tags, or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date, are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3, administered by the Center of Resource Solutions) or for which a market may exist at a future time.
- (tt) “Renewal Term” any additional term, which shall extend the Initial Term, to the extent agreed upon by the Parties as set forth in Section 2.1.
- (uu) “Reporting Rights” means the right of Provider to report to any federal state or local agency, authority or other party or under any present or future domestic, international or foreign emissions trading program, that Provider owns the Environmental Financial Attributes and Renewable Energy Credits associated with the Solar Services and the System.
- (vv) “Security Interest” has the meaning set forth in Section 8.2.
- (ww) “Solar Carport” is an overhead canopy that supports a solar photovoltaic array and is installed over the parking spaces in a parking lot.
- (xx) “Solar Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.
- (yy) “Solar Services” means the supply of electrical energy output from the System.
- (zz) “Solar Services Payment” has the meaning set forth in Section 6.1.
- (aaa) “Specifications” has the meaning set forth in Section 3.1.
- (bbb) “Stated Rate” means a rate per annum equal to the lesser of (a) six percent (6%) per annum and (b) the maximum rate allowed by Applicable Law.
- (ccc) “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 2.
- (ddd) “System Loss” means loss, theft, damage or destruction of the System, or any other occurrence or event that prevents or limits the System from

operating in whole or in part, resulting from or arising out of any cause (including casualty or condemnation or Force Majeure) other than (i) Provider's gross negligence or intentional misconduct, (ii) Provider's breach of maintenance obligations under the Agreement, or (iii) normal wear and tear of the System.

(eee) "System Operations" means Provider's operation, maintenance and repair of the System performed in accordance with the requirements set forth herein.

(fff) "Term" has the meaning set forth in Section 2.1.

(ggg) "Terminal Value(s)" means the value or values, as applicable, set forth in Schedule 3 payable under the circumstances described in Section 2.2, Section 4.3(a), Section 6.1, Section 11.2.

2. TERM AND TERMINATION

2.1 **Term.** The term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall continue for _____ (__) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for one additional five (5) year term ("Renewal Term"), if written notice of renewal is given by the Host to the Provider at least six (6) months prior to the expiration of the Term. The Initial Term and any subsequent Renewal Term(s) combined shall be referred to collectively as the "Term." During the Renewal Term, if any, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred eighty (180) days' prior written notice to the other Party. The annual price-per-kWh and the Estimated Annual Production for any Renewal Term shall be mutually agreed to by the Parties on or before the first day of any such Renewal Term.

2.2 **Early Termination.** The Host may terminate the Agreement at any time and for any reason upon ninety (90) days' prior written notice. If this Agreement is terminated as provided in Section 4.3(a), Section 6.1, Section 11.2, or Section 13.3, except to the extent specified otherwise in this Agreement, Host shall pay to Provider the greater of (i) the Fair Market Value of the System as of the date of notice of termination or (ii) the applicable Terminal Value as contained in Schedule 3 herein, and Provider shall cause the System to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days of the notice of termination from Host, Provider shall remove the System and shall remediate and restore the Premises to the condition of the Premises prior to the installation of the System as set forth in Section 2.5, ordinary wear and tear excepted. Upon Host's payment of the Terminal Value, the Agreement shall terminate automatically.

2.3 **Purchase Option.** On the Purchase Date, so long as a Host Default shall not have occurred and be continuing, Host has the option to purchase the System (the “Purchase Option”) for a purchase price (the “Option Price”) equal to the lesser of (i) the Fair Market Value of the System as of the Purchase Date or (ii) the applicable Terminal Value as contained in Schedule 3 herein. To exercise the Purchase Option, Host shall, not less than one hundred eighty (180) days prior to the Purchase Date, provide written notice to Provider of Host’s intent to exercise the Purchase Option on the Purchase Date. Within thirty (30) days of receipt of Host’s written notice, Provider shall notify Host in writing of the Option Price. Host shall have a period of thirty (30) days after such notification to confirm in writing or retract its decision to exercise the Purchase Option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System by written notification to Provider. In the event Host does not dispute the Fair Market Value and confirms its exercise of the Purchase Option in writing to Provider (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Host on the Purchase Date, free and clear of any Liens and/or a Financing Party’s security interest, and (B) assign all vendor warranties for the System to Host, and (ii) Host shall pay the Option Price to Provider on the Purchase Date, in accordance with any previous written instructions delivered to Host by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement. Upon such execution of documents and payment of the Option Price, the Agreement shall terminate automatically and Host shall own the System and all Environmental Financial Attributes relating to the System. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments described in Section 2.2 accruing from and after the Purchase Date. In the event Host does not either: (a) confirm, or retract, its exercise of the Purchase Option in writing within thirty (30) days after receipt of Provider’s written notice of the Option Price, or (b) dispute the determination of the Fair Market Value of the System by written notification to Provider, the provisions of the Agreement shall be applicable as if Host had not exercised the Purchase Option, and Host shall promptly reimburse Provider for any costs and expenses incurred by Provider in connection with such retracted exercise of the Purchase Option, up to a maximum aggregate amount of \$1,500. Subject to the assignment of any vendor warranties as provided above, enforcement of which by Host shall be solely against the issuer of such warranty, Host’s purchase of the System from Provider shall be on an as-is, where-is basis, and shall be without any warranty of any kind from Provider.

2.4 **Determination of Fair Market Value.** If the Option Price indicated by Provider in accordance with Section 2.3 is disputed by Host, within thirty (30) days of receipt of Host’s notice of dispute by Provider, the Parties shall each retain the services of a professional appraiser to value the System. Each Party shall bear its own costs for its respective appraiser. The two appraisers selected by the Parties shall mutually select a third appraiser, whose services shall be paid for in equal shares by the Parties. The three appraisers shall evaluate and determine the price of the System

that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction (the "Fair Market Value") within sixty (60) days of the date upon which Host provides notice of the dispute, by submitting their reports to both Parties. The appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers' valuations shall be deemed to be the Fair Market Value, which shall be binding upon the Parties. Provider shall be obligated to sell and Host shall be obligated to purchase the System at the value resulting from such determination of the Fair Market Value. Upon Host's payment of the Option Price to Provider for the System, Provider shall furnish the System, including all components thereof, to Host. All applicable warranty documents and warranties for the System shall be transferred to Host within thirty (30) days of Host's payment to Provider. Provider shall complete all documentation required to transfer complete title to the System (free of Liens or claims) and any warranties to Host.

- 2.5 **Removal of System at Expiration/Termination.** Subject to the Host's exercise of the Purchase Option and payment of the Option Price to Provider, or upon cancellation or termination of the Agreement or expiration of the Term, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises and restore the Premises to its original condition, ordinary wear and tear excepted, on a mutually convenient date or dates, but in no case later than one hundred eighty (180) calendar days after the Expiration Date. For purposes of Provider's removal of the System, the covenants of Host set forth in Section 7.2 shall remain in effect until the final date of removal of the System. Upon removing the System, Provider shall leave the Premises in broom-clean condition. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date or dates, Host shall have the right, at its option, to either (i) remove the System to a public warehouse and restore the Premises to its original condition, ordinary wear and tear excepted, at Provider's cost or (ii) leave the System in place and receive electricity from the System, but without any payment obligation to Provider, notwithstanding any provision to the contrary herein. To the extent the Agreement is terminated as a result of any Host Default, Host shall be obligated to pay for Provider's actual costs of removal of the Systems and restoration of the Site.
- 2.6 **Provider Conditions of the Agreement.** In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, but no later than the Commercial Operation Deadline, then Provider may terminate the Agreement, in which case neither Party shall have any liability to the other Party:
- (a) Provider determines that the Premises, as is, is insufficient to accommodate the System.

- (b) There exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.
- (c) There is a material adverse change in the Environmental Financial Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors, including any Financing Party.
- (d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it.
- (e) Provider has not received a fully executed (i) release or acknowledgement from any mortgagee of the Premises and the Consent and Agreement, if required by Provider's Financing Party, to establish the priority of its security interest in the System, or (ii) such other documentation reasonably requested by Provider to evidence Host's ability to meet its obligations under Section 7.2(d) to ensure that Provider will have access to the Premises throughout the Term.
- (f) The Parties mutually agree that there has been a material adverse change in the rights of Host to occupy the Premises or Provider to construct the System on the Premises.
- (g) Provider has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System.
- (h) Provider has determined that there are easements, or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.
- (i) There has been a material adverse change in Host's credit-worthiness.
- (j) Provider has not received all required environmental approvals or permits from applicable Governmental Authorities in a manner timely enough to allow Provider to begin construction and satisfy the Commercial Operation Deadline.
- (k) Provider has not received from Host evidence of the property insurance policy required under Section 17.

- 2.7 **Host Conditions of the Agreement.** In the event that the Commercial Operation Date has not occurred on or before the Commercial Operation Deadline, through no fault of Host, Host may (at its sole discretion and no later than the Commercial Operation Deadline) terminate the Agreement, in which case neither Party shall have any liability to the other.
- 2.8 **Environmental Compliance.** Immediately following the Effective Date, Host shall commence the process for complying with the applicable requirements of any environmental laws applicable to the process of performing the Installation Work at the Premises and operating and maintaining the System subsequent to the Commercial Operation Date. Provider shall reasonably cooperate with Host in connection with complying with any such environmental laws, as may be applicable. Host shall bear its own costs incurred as the lead entity and for review of environmental compliance.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

- 3.1 **Installation Work.** Provider will cause the System to be designed, engineered, furnished, installed and constructed substantially in accordance with Part II: “Specifications” and Applicable Law, including but not limited to, the payment of prevailing wages, if legally required. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Provider or by independent contractors with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and duly licensed under the laws of the State of New York including any license required for the construction of the System, pursuant to written contracts with such independent contractors. Provider must obtain Host’s written approval, which shall not be unreasonably withheld, of the System’s designs, contract drawings and specifications prior to undertaking construction of the System. Host shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Provider is adhering to the Specifications. Except in the case of an emergency, Provider shall perform the Installation Work at the Premises between the hours of 7:00am and 5:00pm, Monday through Friday, or at such other times as may be permitted by the Authority, and in a manner that minimizes inconvenience to and interference with Host’s use of properties adjacent to the Premises, to the extent practicable.
- 3.2 **Approvals; Permits.** Host shall cooperate with Provider in obtaining all necessary approvals and permits for the Installation Work, including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required. Host shall bear no liability for Provider’s failure to obtain any such permit or approval.

3.3 System Acceptance Testing.

- (a) Provider shall deliver written notice to the Host that the system is ready for operation and that necessary testing and commissioning of the System has been conducted in accordance with such practices, methods, acts, guidelines, standards and criteria reasonably accepted or followed by the majority of photovoltaic system integrators in the United States as well as in accordance with Exhibit A hereto. Host shall accept delivery of test energy, prior to the Commercial Operation Date.
- (b) Written notice confirming the readiness of the System shall be provided to the Host no less than three Business Days following the testing and commissioning of the System as detailed above in 3.3(a) and Exhibit A hereto. If the results of such testing are approved by the Port Authority (such approval not to be unreasonably withheld), the date of such approval by the Port Authority shall be the "Commercial Operation Date."

3.4 **Connection.** Provider shall furnish and install all necessary wiring from the System to the Point of Delivery. Provider is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment.

4. SYSTEM OPERATIONS.

4.1 **Provider as Owner and Operator.** Provider and/or Provider's Financing Parties shall be the legal and beneficial owner(s) of the System at all times, except as otherwise provided in this Agreement. The System is personal property and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Host's gross negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed to Provider by Host.

4.2 **Metering.** Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System (the "Meter") and may, at its election and cost, install a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy delivered by the Local Electric Utility and consumed by Host at the Premises.

- (a) Meter Reading. Readings of the Meter shall be conclusive as to the amount of output; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(c)(iv), or registers inaccurately, measurement of output shall be determined by estimating by reference to quantities measured during periods of similar conditions when the Meter was registering accurately. Provider shall read the Meter at the end of each

calendar month, and shall record the output delivered to Host. The Meter shall be used as the basis for calculating the Solar Services Payments due under the Agreement.

- (b) Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:
- (i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.
 - (ii) The non-disputing Party shall, within fifteen (15) Business Days after receiving such notice from the disputing Party, advise the disputing Party in writing as to the non-disputing Party's position concerning the accuracy of the Meter and the non-disputing Party's reasons for taking such position.
 - (iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the Meter.
 - (iv) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (x) Provider shall promptly cause any such Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (y) the Parties shall estimate the correct amounts of Solar Services delivered for no more than the preceding six (6) months and Provider shall either invoice or credit Host for the difference between the amounts previously paid and the amounts that would have been paid based on the correct amounts of Solar Services delivered, and (z) Provider shall bear the cost of inspecting and correcting the Meter.

4.3 System Disruptions.

- (a) Substitution of Premises. If, for reasons other than Provider's breach of its obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date then Host shall provide Provider with a mutually agreeable substitute premises in a location with similar Solar Insolation as soon as is practicable after the cessation of Provider's access rights to the Premises. Host shall provide at least one hundred eighty (180) days' written notice prior to the date on which it desires to effect any such substitution. In connection with such substitution, Host and Provider shall amend the Agreement to specify the

substitute premises. Host shall also provide to Provider any new owner, lessor, or mortgagee consents or releases, executed by the applicable Person, as required by Provider's Financing Party in connection with the substitute premises. In connection with any substitution of premises, Host shall pay all costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider's Financing Parties in the System. If the substitute premises have inferior Solar Insolation or other conditions or characteristics that negatively impact System performance as compared to the original Premises, Provider shall have the right to make an adjustment to the kWh Rate such that Host's payments to Provider are the same as if the System were located on the original Premises. In connection with any substitution of premises, Host shall continue to make all Solar Services Payments, and Host shall reimburse Provider for any lost revenue in connection with the substitution of premises, including any lost revenue associated with Solar Services Payments, any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits. For the purpose of calculating Solar Services Payments and lost revenue, Solar Services shall be deemed to have been produced at the average rate of the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation, adjusted for seasonal variations in Solar Insolation at the Premises). If (i) Host is unable to obtain such consents and releases for a substitute premises or (ii) Host otherwise does not, as soon as is practicable, provide Provider with a mutually agreeable substitute premises, Provider shall have the right to terminate the Agreement and Host shall promptly pay to Provider the applicable value in accordance with Section 2.2. Upon removal of the tangible property comprising the System from the Premises, the Premises shall be returned by the Provider, and at no cost to the Host, to its original condition, except for incidental hardware or other support structures and ordinary wear and tear.

- (b) System Disruptions. If the Term of the Agreement is in excess of twenty (20) years, the Parties agree and expect that Host may require that the System be temporarily shut-down, including but not limited to, for the purposes of Host repairing or replacing the BES. As such, the Parties agree that during the Term of the Agreement, Host shall be afforded two periods of twenty (20) consecutive days (the "Allowed Disruption Time") during which the System shall be rendered non-operational as safety may so

require. Host shall pay to Provider reasonable costs to disassemble, store, and reassemble the System, if any, but Host shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time nor shall Host be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits. In the event that (x) Host requires more time beyond the Allowed Disruption Time or (y) any act of gross negligence or omission of Host or Host's employees, Affiliates, agents or subcontractors (collectively, a "Host Act") results in a disruption or outage in System production, then, Host shall (i) continue to pay Provider reasonable costs to disassemble, store, and reassemble the System, if any, and (ii) pay to Provider all Solar Services Payments during such period of System disruption (the "Disruption Period"), and (iii) reimburse Provider for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced sales of Environmental Financial Attributes and any reduced Renewable Energy Credits during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation). Except in the case of an emergency, Host shall take all reasonable actions to perform any such repairs or replacement between October 1 and March 31 of any calendar year to help mitigate lost production and possible tax implications for Provider and Provider's Financing Parties. Host shall take all reasonable actions to minimize any disruptions of the System.

- (c) Increase and Decrease in Sites. Host shall have the right, at any time and from time to time in its sole discretion, to increase or decrease and/or add sites not described herein in the specifications or remove sites or parts of sites described herein. In the event the Host decides to change any sites, such change shall be by written notice not less than thirty (30) days before said change is to be effective upon the date specified in said notice. In the case of an increase in site(s), the Provider and the Host shall draft an amendment to this Agreement to show the additional site(s) and the negotiated price of electricity generated at each added site. In the event of a decrease after the start of construction, the Provider and the Host shall draft an amendment to this Agreement to show the additional costs, if any, incurred by Provider due to such change and Host shall pay Provider such costs. The Provider shall not be entitled to compensation for work not performed.

- (d) Emergency Interruption. Notwithstanding anything to the contrary herein, Provider shall have the right in the event of an emergency to interrupt, reduce or discontinue the delivery of Solar Services for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Solar Services, or at the direction of an authorized Governmental Authority or Local Electric Utility without liability to either Party. Any such emergency shall be considered a Force Majeure Event.

5. DELIVERY OF SOLAR SERVICES.

- 5.1 **Purchase Requirement.** Provider shall deliver electricity to the Point of Delivery, and Host shall accept delivery of the electricity at the Point of Delivery, beginning on the Commercial Operation Date until the end of the Term. Title to and risk of loss of the electricity shall pass from Provider to Host at the Point of Delivery. Host agrees to purchase, irrespective of Host's actual consumption, all of the Solar Services during the Term. While the Solar Services are calculated and billed on a per kWh basis as set forth in Schedule 3, they represent a package of services and benefits.
- 5.2 **Estimated Annual Production.** The Estimated Annual Production for each year of the Initial Term is as set forth in Schedule 3. Host acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the System is guaranteed in amount or time of delivery except as that provided for herein. Host further acknowledges that it must retain a primary source of power from the Local Electric Utility. Beginning on the Commercial Operation Date, the System shall produce not less than 75% of the applicable Estimated Annual Production (the "Minimum Output Requirement") under standard insolation conditions at the Premises as of the Effective Date during the Initial Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Minimum Output Requirement is due to (a) System failure, damage or downtime attributable to third parties; (b) inverter failure and delayed repair of an inverter due to the claims process with the inverter manufacturer; (c) resulting from general utility outages or any failure of any electrical grid; (d) usage of the Premises, or buildings at or near the Premises, which may affect building permits, site permits and related requirements for the operation of the System, or that impact insolation striking the System; (e) a Force Majeure Event; or (f) acts or omissions of Host of any of its obligations hereunder. Subject to that proviso, if as of any anniversary of the Commercial Operation Date beginning on the third anniversary of such date, the actual output of the System for the prior three years (the "Actual System Output") does not equal or exceed the Minimum Output Requirement for such three-year period, in its next invoice Provider shall credit Host an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for commercially available, Local Electric Utility-

provided energy in the applicable market during such three-year period minus the applicable kWh Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such three-year period and the Minimum Output Requirement for such three-year period. For the avoidance of all doubt, provided that Provider credits Host pursuant to the procedure set forth in this Section, in the event that the Actual System Output does not equal or exceed the Minimum Output Requirement such shortfall shall not constitute a Provider Default.

5.3 **Environmental Financial Attributes and Renewable Energy Credits.** Host's purchase of Solar Services does not include Environmental Financial Attributes, Renewable Energy Credits or Reporting Rights, each of which shall be owned by Provider or Provider's Financing Parties for the duration of the Term of this Agreement. For the duration of the Term of this Agreement, Host disclaims any right to Environmental Financial Attributes, Renewable Energy Credits or Reporting Rights associated with the Solar Services and/or the installation and/or operation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section. Provider shall have the exclusive right to claim that: (a) the Solar Services were generated by the System; (b) Provider is responsible for the delivery of the Solar Services to the Point of Delivery; (c) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Solar Services and the delivery thereof to the Point of Delivery; and (d) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing; provided, however, that Host may state that it is purchasing renewable energy from the System to offset its electricity demand and/or that Provider's System is located at Host's Site. Following notice by Provider of actions or omissions which could impair or jeopardize either the sale of Renewable Energy Credits or the production of the Solar Services hereunder, except as required by the Federal Aviation Administration ("FAA") or as required for air navigation purposes, Host shall not take any such action or suffer any such omission. To the fullest extent Host is able to comply, Host shall take such action or suffer such omission as necessary to assist Provider in qualifying for receipt of Renewable Energy Credit payments. Without limiting Provider's other rights hereunder, in the event that Host breaches its obligations under this Section other than due to Host's obligations with respect to the Host's Public Records Access Policy or other freedom of information laws under Applicable Law and, as a result thereof, the quantity or value of the Environmental Financial Attributes generated by the System is reduced, Host shall pay to Provider the value of such reduction.

5.4 **Title to System.** Throughout the duration of the Agreement and prior to any purchase of the System by Host pursuant to Section 2.3 hereof, Provider or Provider's Financing Parties shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property and the legal responsibility of Provider or Provider's Financing Party and shall not attach to, or be deemed a part of, or a fixture to, the Premises. The System shall at all times retain

the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all parties having an interest in the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Host shall provide, at Provider's request, a disclaimer or release from such lien holder. Host shall obtain consent from the fee owner of the Premises to the filing by Provider, on behalf of the fee owner, of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.

6. PRICE AND PAYMENT.

- 6.1 **Consideration.** Subject to any cap set forth in Section 5.1 and commencing on the Commercial Operation Date, Host shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. In the event that Host is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Host under the Agreement are not appropriated, Host may terminate the Agreement upon notice in writing to Provider and payment of the applicable Terminal Value to Provider.
- 6.2 **Invoice.** Provider shall invoice Host on or about the first day of each month that Solar Services are provided hereunder (each, an "Invoice Date"), for the Solar Services Payment in respect of the immediately preceding month, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address provided by Host by regular first class mail postage prepaid.
- 6.3 **Time of Payment.** Host shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.
- 6.4 **Method of Payment.** Host shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate.
- 6.5 **Disputed Payments.** If a *bona fide* dispute arises with respect to any invoice, Host shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Host is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at

the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

- 6.6 **Extra Work Orders.** Except as provided for in Section 4.3(c), should the Port Authority direct any modification or addition to the Project or Solar Services covered by this Agreement, the Parties shall execute a mutually acceptable written Extra Work Order for same. The Extra Work Order may also increase the time within which the Project is to be completed. Any Extra Work Order shall be incorporated in, and become a part of, the Agreement. For purposes of illustration only, the following items may, if directed or caused by the Port Authority, give rise to Extra Work Orders: Addition to or deviation from the specifications described herein; temporary protection of the building at the Site not originally included in the Project description; premature notice to start work causing Provider unnecessary trips; trips back to the Site to repair issues created after the Commercial Operation Date; damage to Provider's work by the Port Authority; and/or any labor required to be done outside of normal business hours. All Extra Work Orders shall be subject to any required Port Authority approval.

7. GENERAL COVENANTS.

- 7.1 **Provider's Covenants.** Provider covenants and agrees to the following:

- (a) Notice of Damage or Emergency. Provider shall (x) promptly notify Host if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System and (y) immediately notify Host if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.
- (b) System Condition. Provider shall exercise commercially reasonable efforts to ensure that the System is capable of providing continuous Solar Services.
- (c) Governmental Approvals. While providing the Installation Work, Solar Services and System Operations, Provider shall obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured by Provider to enable Provider to perform hereunder.
- (d) Health and Safety/Security. Provider shall take all necessary and reasonable safety precautions with respect to furnishing and installing the Installation Work and performing Solar Services and System Operations. Provider shall be responsible for ensuring the security of the System.
- (e) Liens. Other than a Financing Party's security interest in or ownership of Provider's personal property, the System, Provider shall not directly or

indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section 7.1(e), it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

- (f) Applicable Law. Provider shall comply with any and all applicable provisions of Applicable Law related to Provider's performance of its obligations hereunder.
- (g) Interconnection Agreement. Provider shall comply with the terms and conditions of any and all interconnection agreements or any other agreements which are entered into by and between Provider and the Local Electric Utility or Provider, Host and Local Electric Utility for the System.

7.2 Host's Covenants. Host covenants and agrees as follows:

- (a) Notice of Damage, Emergency or Reduction in Power. Host shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System, (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises and (ii) promptly notify Provider if it becomes aware of any interruption or material alteration of the energy supply to the Premises from the System.
- (b) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Host breaches its obligations under this Section 7.2(b), it shall (i) immediately notify Provider in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Provider, and (iii) defend and indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- (c) Consents and Approvals. Host shall ensure that any authorizations required of Host under the Agreement are provided in a timely manner. To the extent that only Host is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Host

shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

- (d) Access to Premises, Security. Subject to Section 2.6(j), the license and Host's reasonable operational needs, Host hereby covenants that (i) Provider shall have access to the Premises and System during the Term of the Agreement and for a reasonable and mutually-agreed-upon time period after expiration or termination of the Agreement to remove the System and restore the Premises, ordinary wear and tear excepted, pursuant to the Agreement, and (ii) except in the event of an emergency and then only to the extent necessary to protect property and life, Host will not, and will not knowingly permit any third party to, interfere with or handle any Provider equipment or the System without prior written authorization from Provider; provided, however, that Host shall at all times have access to and the right to observe the Installation Work and System removal. In the event Host must access the System in the event of an emergency, Host shall as soon as possible notify Provider of such necessity as well as actions taken and shall take only such actions as are necessary to protect property and life.
- (e) Temporary storage space during installation or removal. Host shall, if available during the construction phase, accommodate Provider's request for sufficient space at the Premises for the temporary storage and staging of tools, lay-down areas, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary ("Temporary Installation/Removal Areas") during the Installation Work, System Operations or System removal, and access for rigging and material handling. Such Temporary Installation/Removal Areas are further delineated and described in the Specifications.
- (f) Site Sunlight Access. Host will not permit other buildings, structures or flora on the Premises to overshadow or otherwise block access of sunlight to the System. Host will take all reasonable actions as necessary to prevent buildings, structures or flora on property of third parties from overshadowing or otherwise blocking access of sunlight to the System. In the event that any such obstruction is nonetheless installed or erected, Host and Provider agree to collaboratively work to identify an alternative site for relocating the System pursuant to Section 4.3(a) above, and if no such alternative site is mutually agreed upon by the Parties within thirty (30) days, the Provider shall have the right to terminate the Agreement.

8. REPRESENTATIONS & WARRANTIES.

8.1 **Representations and Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 **Representations Regarding Security Interest.** Host has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the "Security Interest") in the System to one or more Financing Parties. In connection therewith, Host represents and warrants as follows:

- (a) The granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
- (b) There is no existing lease, mortgage, security interest or other interest in or lien or encumbrance of any kind upon the Premises that could attach to the

System as an interest adverse to or senior to Provider's Financing Parties' Security Interest therein.

- (c) Host is unaware of any event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under the Agreement. Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

8.3 Other Representations and Warranties of Host In addition to any other representations and warranties contained in the Agreement, Host represents and warrants to Provider that:

- (a) Host is an entity with the legal capacity to sue and to be sued.
- (b) Host owns or leases the Premises; that it or its lessor has fee simple title to the Premises; and that Host has the right to authorize Provider to enter the Premises, install the System, and perform its other obligations under this Agreement. Subject to its termination rights set forth in Section 2.7, Host represents that it has the right to authorize Provider to enter the Premises, install the System and perform Provider's other obligations under the Agreement pursuant to the terms and conditions of the License and the Agreement.
- (c) Host has all the rights required to enter into the Agreement and the License and perform its obligations hereunder and thereunder without the consent of any third party, except for such third party consents that have already been obtained and that are in full force and effect.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Host Obligations. Host shall reimburse and pay for any documented sales taxes, fees or charges imposed or authorized by any Governmental Authority assessed against Provider due to Provider's sale of the Solar Services to Host, other than income taxes imposed upon Provider and any other taxes from which Host is exempt under federal, state or municipality laws, codes or regulations. Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Solar Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to

its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues.

10. FORCE MAJEURE.

- 10.1 **Definition.** “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action by a Governmental Authority, including a moratorium on any activities related to the Agreement, provided that such Governmental Action is not the result of the fault or negligence of the affected Party; and (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Governmental Approval. A Force Majeure Event shall not be based on the economic hardship of either Party.
- 10.2 **Excused Performance.** Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.
- 10.3 **Termination in Consequence of Force Majeure Event.** If a Force Majeure Event shall have occurred that has prevented Provider from performing all of its material

obligations hereunder and that has continued for a continuous period of three hundred sixty-five (365) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the other Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable. If at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Agreement shall remain in full force and effect, and Host's notice shall be deemed to have been withdrawn.

11. DEFAULT.

11.1 Provider Defaults and Host Remedies.

- (a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):
- (i) A Bankruptcy Event shall have occurred with respect to Provider;
 - (ii) Provider fails to pay Host any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Host of such past due amount; and
 - (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Host's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- (b) Host's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to all rights and remedies expressly provided herein, and subject to Section 12, Host may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until: (1) in the event of a monetary Provider Default, written notice of Provider Default and Host's intent to exercise its remedies and specifying the nature of the default or event giving rise to such right and the amount due has been delivered by Host to the Provider or each Financing Party, and such Provider Default has not been cured within sixty (60) days of delivery of such notice; or (2) in the event of a non-monetary Provider Default, written notice of Provider Default and Host's intent to exercise its remedies and specifying the nature of the default or event giving rise to such right has been delivered by Host

to the Provider or each Financing Party, and such Provider Default has not been cured within sixty (60) days of delivery of such notice or such longer period as is required so long as appropriate action to cure such Provider Default has commenced and is being diligently pursued. If a Financing Party is prohibited from curing any non-monetary Provider Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the time period specified herein for curing a Provider Default shall be extended for the period of such prohibition. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1.

- (c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Host pursuant to this Section 11.1.

11.2 **Host Defaults and Provider's Remedies.**

- (a) Host Default. The following events shall be defaults with respect to Host (each, a "Host Default"):
 - (i) Host fails to pay Provider any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Provider of such past due amount;
 - (ii) Host breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Host fails to so cure, or (B) Host fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;
 - (iii) If the representations and warranties and other statements made by Host hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Provider and (b) the discovery or determination by Host of the misrepresentation; provided, that if Host commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days; and
 - (iv) The License is terminated as a result of Host's default thereunder.
- (b) Provider's Remedies. If a Host Default described in Section 11.2(a) has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to

Provider pursuant to this Agreement, and subject to Section 12, Provider may terminate the Agreement and upon such termination, Provider shall be entitled to receive from Host the applicable Terminal Value pursuant to Section 2.2.

- 11.3 **Removal of System.** Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof, unless the Parties otherwise mutually agree in writing to leave the System in place.

12. LIMITATIONS OF LIABILITY.

Except as expressly provided herein, neither Party shall be liable to the other Party or its officers, directors, employees, agents, affiliates and representatives for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the agreement. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Provider with any liability, or held personally liable to the Provider under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof. In the event that, as a result of any breach of the Agreement by Host, Provider shall recapture any investment tax credits, treasury grants in lieu of investment tax credits, new markets tax credits or other federal or state tax or financial incentive, which shall be deemed to be direct and not indirect or consequential damages. Provider's direct damages shall include compensation, on an after-tax basis, for any such lost or recaptured credit or incentive, to the extent that such damages are not already represented in the applicable Terminal Value required to be made by Host to Provider as may be applicable.

13. ASSIGNMENT.

- 13.1 **Assignment by Provider.** The Provider shall not sell, transfer, mortgage, pledge, subcontract or assign this Agreement or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent contractor, without the prior written approval of the Host, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Host.
- 13.2 **Acknowledgment of Collateral Assignment.** In the event that Provider identifies a secured Financing Party in Schedule 4, or in a subsequent notice to Host, then Host hereby:
- (a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement;

- (b) acknowledges that the Financing Party as such collateral assignee, or otherwise, shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in the Agreement;
- (c) agrees to execute and comply with the Consent and Agreement in substantially the form provided by the Host; and
- (d) acknowledges that it has been advised that Provider has granted a Security Interest in the System to one or more Financing Parties and that such Financing Parties have relied upon the characterization of the System as personal property, as agreed in the Agreement in accepting such Security Interest as collateral for its financing of the System. Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 **Assignment by Host.** Host shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignee assumes in writing the obligations of Host hereunder. Any assignment by Host without the prior written consent of Provider shall not release Host of its obligations hereunder. In the event that Host sells or otherwise transfers the Premises and opts not to relocate the System, Host may either (1) terminate the Agreement and pay Provider the applicable Terminal Value pursuant to Section 2.2 of the Agreement or (2) shall require the purchaser or transferee, as the case may be, to assume Host's obligations under the Agreement and the License pursuant to an assumption agreement reasonably acceptable to Provider; provided that such purchaser or transferee has delivered documentation satisfactory to Provider and the Financing Parties evidencing creditworthiness equal to or greater than the Host.

14. NOTICES.

14.1 **Notice Addresses.** All notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5, or at such other address as may be designated in writing to the other Party from time to time. Copies of any notices provided to Provider under the Agreement shall be promptly delivered by the notifying party to each Financing Party. Any Financing Party shall be an intended third-party beneficiary of this Section 14.

14.2 **Notice.** Unless otherwise provided herein, any notice provided for in the Agreement shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service

(Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

- 14.3 **Financing Notices.** Provider shall keep Host informed of financing plans for the System, including informing Host of the identity of any Financing Party and any changes made with regards to any Financing Party or any additional or changed terms. In the event of any default by Provider with regards to the financing of the System, Provider shall provide Host notice of such default within ten (10) days of the date Provider becomes aware of such default; provided, however, that if Provider is able to cure such default within such ten (10) day period, Provider shall not be required to provide notice to Host of such cured default. In the event Provider cures such a default after such ten (10) day period, Provider shall provide Host notice of such cure within ten (10) days of such cure.

15. CONFIDENTIALITY.

- 15.1 **Confidentiality Obligation.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Host's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall, subject to the requirements of freedom of information laws under Applicable Law, including Host's Public Records Access Policy, (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors, representatives and consultants, and Affiliates, and to its and its Affiliates' lenders, prospective lenders, equity investors and prospective equity investors, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Permitted Recipients"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 15.1, except as set forth in Section 15.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the

disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 **Permitted Disclosures.** Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 **Goodwill and Publicity.** Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host agrees that Provider may, at Host's sole discretion, take photographs of the installation process of the System and the completed System, and Provider may be permitted to use such images in its marketing efforts, including use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information or refer to the Host or to the services performed in connection with this Agreement, unless it first obtains the written approval from the Host. This approval may be withheld if for any reason the Host believes that the publication of the information would be harmful to the public interest or is in any way undesirable.

16. INDEMNITY.

16.1 **Subject to Section 12**, to the fullest extent permitted by Applicable Law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all Losses, including but not limited to Losses arising from personal injury or death, or damage to property, but only to the extent such Losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party, its employees, subcontractors or agents. Such indemnification shall not apply to the extent Losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by an Indemnified Party.

16.2 **If an Indemnified Party** determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Losses, and provide all reasonably necessary or useful information. If so directed, the Provider shall at its own expense defend any suit based upon any claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such party's prior written consent.

17. INSURANCE.

17.1 **Generally.** Provider shall maintain insurance in accordance with Exhibit C hereto. Host shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs: (a) Workers' Compensation (statutory limits) and Employer's Liability Coverage of at least \$1,000,000 per occurrence (b) Commercial General Liability Coverage (Occurrence Form) with limits of at least \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) Automobile Liability Coverage of at least \$1,000,000 each accident for bodily injury and property damage. For claims resulting from the operation, maintenance and repair of the System, Provider's insurance coverage shall be primary. Any insurance or self-insurance maintained by Host shall be in excess of Provider's insurance and shall not contribute with it, except for the negligence of Host and its agents.

17.2 **Additional Insurance.** In addition to the coverage noted above:

- (a) **Host Property Insurance.** Host shall procure and maintain property insurance for the real property upon which the System is located with policy limits of at least the value of the building upon which System is located. Such insurance policy shall (i) be procured on an "all-risk" basis including business interruption coverage, (ii) shall name Provider as an additional insured, (iii) shall provide that the insurer(s) issuing such policies waive all rights of subrogation against Provider and its contractors and agents except in the case of such person's willful misconduct, and (iv) that such insurance is primary insurance with respect to the interests of Host and that any property insurance procured by Provider and Provider's Financing Parties is not contributory.
- (b) Provider shall procure and maintain property insurance for the System with limits of at least the value of the System. Such insurance policy shall (i)

be procured on an “all-risk” basis, (ii) name Host as an additional insured, (iii) provide that the insurer(s) issuing such policies waive all rights of subrogation against the Port Authority except in the case of the Port Authority’s willful misconduct, and (iv) that such insurance is primary insurance with respect to the interests of Provider and any Financing Party.

17.3 **Certificates of Coverage.** Each Party, upon request, shall furnish current certificates evidencing that the coverage required under Sections 17.1 and 17.2 is being maintained.

17.4 **Additional Insureds.**

(a) General Liability. Each Party shall give the other Party covered party status on its General Liability Coverage using ISO endorsement CG2026, or equivalent.

17.5 **Insurer Qualifications.** All insurance or coverage maintained hereunder shall be maintained with companies either rated no less than AVII as to Policy Holder’s Rating in the current edition of Best’s Key Rating Guide (or with an association of companies each of the members of which are so rated) or having a parent company’s debt to policyholder surplus ratio of 1:1, or as otherwise approved by each Party.

17.6 **System Loss.** In the event of any System Loss that, in the reasonable judgment of Provider, results in total damage, destruction or loss of the System, Provider shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Host whether Provider is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Provider notifies Host that Provider is not willing to repair or replace the System, the Agreement will terminate automatically effective upon the delivery of such notice, and Provider shall be entitled to all proceeds of its insurance policies with respect to the System Loss, provided, however, that proceeds, if any, paid on account of damage to the Premises or interruption of Host’s operations shall be paid to Host. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Provider pursuant to this Section 17.6.

18. MISCELLANEOUS.

18.1 **Integration; Exhibits.** The Agreement, together with the Exhibits, Schedules, Appendices attached thereto and hereto and the Authority’s Standard Contract Terms and Conditions, constitutes the entire agreement and understanding between Provider and Host with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits, Schedules, and Appendices, if any, attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

- 18.2 **Incorporation of Port Authority’s “Standard Contract Terms and Conditions.”** Notwithstanding any other provision of this Agreement, the Port Authority’s “Standard Contract Terms and Conditions,” included as Attachment D of the RFP, are hereby incorporated by reference. In the event of any conflict or inconsistency between the Standard Contract Terms and Conditions and this Agreement, the provisions of this Agreement shall govern. In addition, in the event that Sections 6, 14A, 14B, 14C, 14 D, and 14F of the Standard Contract Terms and Conditions are not specifically superseded by the terms of this Agreement, they shall nonetheless be deemed not to apply to this Agreement.
- 18.3 **Amendments.** The Agreement may be amended, modified or supplemented only by an instrument in writing executed by duly authorized representatives of Provider and Host.
- 18.4 **Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 18.5 **Disputes.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party except to the extent that the Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under the Agreement.
- 18.6 **Limited Effect of Waiver.** The failure of Provider or Host to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 18.7 **Governing Law.** The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the State of New York.
- 18.8 **Relation of the Parties.** The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
- 18.9 **Successors and Assigns.** The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective successors and permitted assigns.

- 18.10 **Counterparts.** The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 18.11 **Survival.** The obligations under Sections 2.2 (Early Termination), 2.5 (Removal of System), Section 7.1(d) (Provider’s Covenant), Sections 7.2 (d), (e), and (f) (Host’s Covenants), Section 9 (Taxes and Governmental Fees), Section 12 (Limitation of Liability), Section 14 (Notices), Section 18 (Miscellaneous), shall survive the expiration or termination of the Agreement for any reason.
- 18.12 **Facsimile Delivery.** The Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, “pdf” delivery of the signature page of a counterpart to the other Party.
- 18.13 **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

IN WITNESS WHEREOF AND IN CONFIRMATION OF THEIR CONSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND INTENDING TO BE LEGALLY BOUND HEREBY, PROVIDER AND HOST HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST SET FORTH ABOVE.

PROVIDER: _____

BY:

NAME:

TITLE:

HOST: PORT AUTHORITY OF NEW YORK AND NEW JERSEY

BY:

NAME:

TITLE:

POWER PURCHASE AGREEMENT

PART II – SCOPE OF WORK AND SPECIFICATIONS

The solar installation is to occur on the property located at 1130 First Street Terminal/Tower, Newburgh, NY 12550, otherwise known as Stewart International Airport.

The scope of work shall include, but not be limited to, the design, installation, operation and maintenance of a solar photovoltaic (PV) system to be located on carport structures erected in areas of the Site's parking lot(s) designated in Exhibit 1 of the associated RFP.

The system shall be capable of producing a minimum of 1,500 kW-DC STC of electricity, which shall be provided and purchased under a Power Purchase Agreement.

The PV system shall be connected to the primary side of the service on the Airport's side of the Central Hudson meter located in the existing medium voltage switchgear.

The system shall conform to NEC-690 and to any applicable local codes and utility requirements.

The System will consist of solar arrays mounted on "carport" structures as described below.

The System will adhere to the following requirements:

- i. The System will only be installed on the parking lot areas indicated in Exhibit 1 of the associated RFP.
- ii. The carport structures will provide a minimum height clearance of fourteen (14) feet to accommodate snow removal equipment.
- iii. The vertical supports of the carport structures will be arranged in a single line to avoid creating a "corridor" effect.
- iv. The vertical supports of the carport structures will be encased in concrete to a height of four (4) feet to minimize damage from vehicles.
- v. The carport structures will be equipped with energy efficient lighting. The lighting system shall be designed to operate regardless of the availability of solar generated power and to the same requirements (illumination levels, hours of operation, etc.) as imposed on the parking lot lighting systems not connected to the solar PV system.
- vi. The carport structures will be equipped with rain gutters and downspouts. The discharge will be directed per Port Authority direction.
- vii. The carport structures will be of such a design that bird roosting and nesting will be discouraged if not prevented. Alternatively, the carport structures will be equipped with devices such as netting or other devices that will discourage or prevent bird nesting. The carport design will be subject to review by Port Authority Wildlife Biologists to ensure that it will sufficiently deter bird roosting and nesting.

The Provider shall submit its proposed design package and Federal Aviation form 7460 to the Port Authority, including any applicable glare analysis required by the FAA for Solar PV projects at airports.

After approval to install the Solar PV system at the Site is granted by the FAA, the Provider shall provide the Port Authority with a detailed design package including all required drawings and specifications necessary to install, operate, and maintain the Solar PV system. The design package shall be submitted as a Port Authority Tenant Alteration Application (TAA) by a State of New York licensed Professional Engineer.

1. SITE SURVEY

Prior to beginning design, the Provider shall perform a Site Survey at the proposed PV installation location. The survey shall include, at a minimum:

Electrical engineering review: an assessment of the proposed interconnection along with the building's electrical distribution system to ensure that the proposed System may be interconnected safely and in accordance with all applicable codes. The Provider shall assume that the System installation will interconnect to the primary side of the service on the Airport's side of the Central Hudson meter located in the existing medium voltage switchgear.

2. SYSTEM DESIGN

The System shall be designed for normally unattended operation and shall account for structural and electrical design requirements. The design shall not interfere with area drainage and shall not inhibit access to the parking lots or buildings on the Site. The PV system shall not adversely impact the Authority's electrical distribution system. All components of the PV system shall be constructed of corrosion-proof and UV -resistant materials.

The System shall be designed to achieve the most efficient voltage for the affected area and shall minimize loss and maximize usable system electrical output. The design shall ensure that System failure does not affect the quality of supply of electricity at the Site.

The System design shall include installation of a Data Acquisition System (DAS). The DAS shall be a tool, accessible by the Port Authority and all parties in the PPA, that will record and display measurement of ambient temperature, wind speed, plane or array of solar irradiation, and DC and AC system power output. The DAS shall be capable of storing up to one year of data from the PV system and shall be accessible to users through an internet website with username and password protection.

The Provider shall be responsible for identifying and obtaining all required permits, completing necessary submittals, and paying associated fees required by local, state, and federal governing departments. These departments include, but are not limited to utility providers, building departments, etc.

A NY state licensed Professional Engineer with a minimum of five (5) years recent and direct experience in PV system design which includes at least two (2) carport PV systems of the type to be proposed shall prepare the System design package.

The System design must be approved by the Authority and other agencies.

- a) Prior to installation, the System design must be submitted to the Federal Aviation Administration (FAA) by the Port Authority for approval before being considered final. The system, as a modification to the Airport Layout Plan (ALP) may be subject to National Environmental Policy Act (NEPA) provisions. The developer must prepare all required FAA NEPA documentation for the project in coordination with the Port Authority. FAA approval may require modification to the System design. FAA guidance on installing PV systems at airports can be found at the following:

https://www.faa.gov/airports/environmental/policy_guidance/media/airport_solar_guide_print.pdf

- b) The System design must also be submitted to the Port Authority's Tenant Construction and Alteration Process (TCAP) for approval before being considered final. TCAP approval may require modification to the System design. More information on the TCAP process can be found at the following:

<http://www.panynj.gov/business-opportunities/tcap/>

The design package shall include, at a minimum:

- a) A written overview describing the System design and expected generation capacity. The overview shall contain manufacturer data sheets for the following: PV panels, inverters, AC and DC disconnect switches, lightning arrestors, surge suppressors, combiner boxes, circuit breakers, electrical panels, mounting systems/platforms, DAS, computer, and other system components as appropriate. Note: All components must be UL Listed, not just UL Recognized. The overview shall detail the location of equipment installations.
- b) General array layout with shading diagrams, to include a dimensional drawing of the layout of the System as it is to be installed on the Site. The drawing shall include:
 - i) System component locations
 - ii) Size and type of conduit;
 - iii) Major Site features such as buildings, structures, retaining walls, landscaping features, drainage and other underground structures, etc.;
 - iv) Presence of environmentally sensitive areas;
 - v) Site personnel access, access to System components identified above,
- c) Single-line diagrams;
- d) Series and parallel string wiring diagrams;
- e) Three-line diagrams to include the following:
 - i) Make, model, AC kW rating, and UL I741 listing of inverter(s);

- ii) Make, model, DC kW rating, and UL 1703 listing of solar panels;
 - iii) Make, model, voltage, current and interrupt ratings of all AC and DC disconnect switches;
 - iv) Make and model of all lightning arrestors and surge suppression equipment;
 - v) Make, model and UL I741 listing of combiner boxes;
 - vi) Make, model, manufacturer part number and rating of combiner box fuses, as necessary;
 - vii) Make, model and rating of all circuit breakers and electrical panels;
 - viii) Size, insulation rating and temperature rating of system wiring and nominal voltage present on each line; and
 - ix) Complete electrical circuit back to site's utility meter. All site electrical panels related to the System will be shown. Such panels will be labeled with the make, model, bus rating and facility designation. The main circuit breaker will also be labeled with the make and rating (if applicable).
- f) Ampacity Report detailing the calculations used to determine the wire gauge(s) and circuit breakers selected for the System.
 - g) Installation details- including mounting method and location of transformers, inverters and other equipment;
 - h) Equipment cut sheets and shop drawings indicating fabrication details, dimensions, weights, loads, required clearance, method of assembly, design calculations, and mounting details for components;
 - i) Product data, including features, components, ratings, and performance criteria;
 - j) Factory test reports indicating performance at Standard Test Conditions (STC);
 - k) Project schedule;
 - i) *Note Proposer should be aware that the parking lot is in high demand. Proposer will be required to work closely with airport personnel in scheduling work areas. The construction plan must minimize the impact on parking lot operations including the number of spaces closed for construction at any one time. Proposer should not plan on closing or blocking access to large sections of the parking lot for construction at any time.*
 - l) Equipment staging plan;
 - m) A start-up, testing and commissioning plan;
 - n) An operations and maintenance (O&M) manual shall be provided for each PV system to be installed. Each O&M manual shall include, but not be limited to, basic written description of PV systems and components; one-line schematic of system; Three-line diagram of system; start-up and shut down procedures incorporating site-specific photos

of all components involved (AC and DC disconnects, inverters, circuit breakers, etc.); and safety provisions.

As part of the PPA, the Provider will retain all responsibilities for operations, maintenance, and repairs, as needed, of the System. The Provider shall submit quarterly production reports to the Authority for review.

3. SYSTEM INSTALLATION AND INSPECTION

All construction to be completed under this PPA shall be in accordance with and meet or exceed Port Authority Construction Standards and Specifications, which are available at <http://www.panynj.gov/business-opportunities/engineering-documents.html>.

Prior to commencement of construction, the Contractor shall submit a Health & Safety Plan to the Port Authority for review. The Contractor shall observe all safety practices required by Occupational Safety and Health Administration (OSHA) for performing construction work of this type.

Prior to installation, the Contractor shall verify that each PV module has been individually factory tested and certified. PV module strings shall be matched at the factory for optimal current performance.

The Contractor shall install all PV systems in compliance with all applicable laws, rules, regulations, codes and standards and shall complete all required inspections. The Contractor shall have a licensed electrician with at least three (3) years recent and direct experience in PV system interconnection.

The Contractor shall arrange for an electrical inspection by the local authority or authorities having jurisdiction and inspection by a nationally recognized testing laboratory when installation is complete.

The Contractor shall notify the Authority, in writing, that installation and inspection has been completed and that the System is available for grid parallel operation. The Contractor shall include a copy of the certificate of electrical inspection with the written notification.

4. OPERATION AND MAINTENANCE

The Contractor shall ensure that designated Authority staff are familiarized with the basic operation and troubleshooting of the System in case of an emergency. The Contractor shall respond to an emergency within twelve (12) hours of any notification. However, if the System poses a direct threat to life, health, and safety, the Authority reserves the right to take appropriate action without liability, which may include, but not be limited to, shutting off the System. The Contractor shall perform all maintenance procedures including cleaning and preventative maintenance.

The Contractor shall review all of the System's O&M manuals with designated Authority staff immediately following start-up so that they may be able to troubleshoot in the case of an emergency. However, Authority staff will have no responsibility in operating, maintaining, and/or disconnecting the PV system.

5. TESTING AND COMMISSIONING

Prior to commencement of the initial monthly billing period, the Contractor shall conduct testing on the System as outlined in this Section, to ensure compliance with all requirements of the scope of services. These tests shall be conducted after the complete System has been installed and all electrical and mechanical connections have been made. The Contractor shall document and archive results of all tests for future reference.

a) Pre-Start-Up Approvals, Inspections, Verifications, and Tests

i) Pre-Start-Up Approvals

Prior to turning on the System, the Contractor shall request approval from the Authority in writing to turn on the System. The Authority will indicate its approval or denial of the request in writing. The System may not be turned on without the receipt of written approval from the Authority.

ii) Installation Inspections and Verifications

A. The Contractor shall conduct an in depth inspection to ensure that the System is installed in a professional manner that is consistent with industry practice and operational requirements; make a photo-record of the installation and major components including modules, inverters, transformers, and source circuit combiners; and show connections within all the Contractor-installed enclosures. The Contractor shall include a copy of the photo record in the O&M Manual described above.

B. The Contractor shall ensure that all components are new and properly installed.

C. The Contractor shall ensure that all outdoor components are weather-proof and capable of surviving under the Site's environmental conditions for the duration of the Contract. The Contractor shall be responsible for the following: ensuring that all outdoor enclosures are equipped to alleviate condensation, and ensuring that all doors, covers, panels, and cable exits are gasketed or otherwise designed to limit the infiltration of dirt and moisture.

D. The Contractor shall inspect that all wiring is new, copper and continuous for each wiring run. The Contractor shall be responsible for the following: ensuring that all wiring is well supported and the proper strain relief is correctly installed; inspecting that all exposed wiring is of the correct type, is suitably sunlight- and weather-resistant, and is factory marked or stamped as such; inspecting that all wires have identifying labels or markings on both ends; affixing permanent and

durable labels or markings in accordance with American National Standard Institute (ANSI) Standard Z535.4; and inspecting that wiring is bundled, laced and otherwise laid in an orderly manner. Labels or markings on exposed wiring shall be of the type that is rated for withstanding the Site's outdoor environmental conditions.

- E. The Contractor shall ensure that all non-current-carrying metal parts are solidly grounded and all equipment and PV system grounding is installed and functional.
- F. The Contractor shall ensure that all lightning and surge suppressors are new and properly installed and wired.

iii) Array Tests

- A. The Contractor shall test each source circuit for open circuit voltage (VOC) and short circuit current (ISC). The module manufacturer will provide source circuit testing instructions and tables of expected values for measurement of individual source circuit VOC and ISC. The Contractor shall follow the instructions and refer to these tables when testing source circuits. Each source circuit shall be tested for VOC and ISC under good, clear weather conditions. Ambient temperature and solar irradiance in the plane of the array shall be measured and recorded. The measurements shall be recorded and compared to the values in the tables. The instructions will provide a guide of suggested actions in the event the measurements are out of the expected ranges in the table. A copy of the measurements shall be provided to the Authority after testing and shall be included in the O&M Manual described herein.
- B. The Contractor shall test each source circuit for positive and negative current to the ground. Source circuits with a current higher than 0.1 mA to ground shall be considered defective under the terms of the warranty and shall be repaired by the Contractor at no additional expense to the Authority.
- C. The Contractor shall test each source circuit for resistance to ground with a meg-ohm meter. Source circuits with an insulation resistance that are below $1M\Omega$ at 1000 Vdc or which fall below $1M\Omega$ at 1000 Vdc during the warranty period shall be considered defective under the terms of the warranty and shall be repaired by the Contractor at no additional expense to the Agency.

b) Start-Up, with Inverter Operational Test

i. Start-Up

- A. Prior to start-up tests, all other testing described in the previous subsections shall have been satisfactorily completed.
- B. The Contractor shall ensure that for inverters with an ON switch, all System disconnects are in the CLOSED position prior to turning on the inverter. For inverters that do not incorporate an ON switch, the System shall be turned on when all System disconnects are in the CLOSED position.

C. The Contractor shall ensure that there is written approval from the local utility for interconnection of the System.

ii. Inverter Operational Test

In addition to the following test sequence, the Contractor shall perform all tests required by the manufacturer. The steps in the inverter operational test will include, but not be limited to:

- A. Ensuring that the inverter is switched off before proceeding;
- B. Testing and recording the AC line voltage at the inverter to insure that it is within the proper limits as stated by the manufacturer;
- C. Testing that the phase sequencing is correct, if applicable;
- D. Checking the continuity of all fuses;
- E. Ensuring that the DC open-circuit voltage is within the manufacturer's recommended range at the DC disconnect;
- F. If the DC voltage is correct, closing the inverter cover and closing the DC and AC disconnect switches;
- G. After the manufacturer's specified start-up time, confirming that the inverter is operating by recording the DC operating voltage and string currents, AC phase voltages and phase currents and inverter power;
- H. Closing all open equipment enclosures; and
- I. Listening for, finding the cause, and remedying any unusual sounds from the System or components.

The Contractor shall turn on the System and ensure that the System is working as specified. The Contractor shall witness and record proper operation under three modes of operation after manual start-up: automatic start-up, full power operation, and automatic nighttime shutdown. The Contractor shall record all operating parameters of the PV system during this period.

c) Final System Acceptance Testing and Commissioning

i. Acceptance Test and Commissioning Report

The System shall operate for thirty (30) days and shall perform optimally without an unscheduled maintenance incident. The Contractor shall submit a written Acceptance Test Report summarizing the first thirty (30) days of data including electricity generated on a daily basis and performance to the Authority within three (3) business days of the completion of the Acceptance Test Report. The Acceptance Test Report shall identify the expected output of the System and compare its results with actual data collected.

The Authority shall review and provide written approval or denial of the Contractor's Acceptance Test Report as soon as practicable. Upon approval, the Contractor shall bill the Authority for the electricity generated during the Acceptance Test Report testing period.

The Contractor shall not bill the Authority for periods subsequent to the period covered by the Acceptance Test Report until the Contractor receives the Authority's written approval of the Acceptance Test Report.

ii. Electrical Code Test

A nationally recognized testing lab, such as UL or Intertek Testing Services NA (ITSNA), shall test the PV system at each site. The Contractor shall submit copies of the nationally recognized testing lab's documentation to the Authority within three (3) Business Days of the testing.

6. REMOVAL OR PURCHASE OF EQUIPMENT AT END OF CONTRACT TERM

Any purchase or removal of the System at the end of the Term shall be governed by Section 2 of this Agreement.

7. WARRANTY

- a) The Contractor shall provide a minimum twenty-five (25) year manufactured part warranty through the manufacturer(s) for all System components, exclusive of inverters. The warranty shall include but not be limited to, mounting systems, hardware, wires, and panels.
- b) The PV panels shall be guaranteed by the manufacturer to provide a minimum of 80% of their rated electrical output for a minimum of twenty-five (25) years.
- c) The inverters shall be guaranteed free from defects in materials and workmanship for a minimum of five (5) years.
- d) The Contractor shall provide post-installation troubleshooting, maintenance, repair and replacement services ("Post-Installation Services") for the term of the Contract, which shall include all items installed by the Contractor, including, but not limited to PV panels, inverters, conduit, PV rack, etc.
- e) The Contractor may attempt to troubleshoot problems remotely.
- f) The Contractor shall report to the Site for troubleshooting within ten (10) business days if the problem has not been remotely resolved.
- g) In all cases, the Contractor shall return the System to service within twenty (20) business days of any need for Post-Installation Services.
- h) The Contractor shall issue a written summary report to the Authority within ten (10) business days of the completion of any Post-Installation Services.

All Post-Installation Services performed and all components replaced shall be at no additional cost to the Authority.

POWER PURCHASE AGREEMENT

PART III – SCHEDULES and ATTACHMENTS

- SCHEDULE 1: POINT OF DELIVERY
(Developed from system design provided by Proposer)
- SCHEDULE 2: SYSTEM
(Developed from system design provided by Proposer)
- SCHEDULE 3: COST PROPOSAL FORM
(From Proposal)
- SCHEDULE 4: FINANCING PARTIES
(From Proposal)
- SCHEDULE 5: NOTICES
(From Proposal)

EXHIBIT A:

EXHIBIT A: SYSTEM ACCEPTANCE AND TESTING

(Documentation of Testing Requirements Contained in Section 5 of this PPA)

EXHIBIT B – EXAMPLE SOLAR FACILITY LICENSE

SOLAR FACILITIES LICENSE

The Port Authority of New York and New Jersey (“Host”) hereby grants to _____ and to its representatives, contractors, subcontractors, servants, agents, employees, contractors and subcontractors (collectively, “Provider”) a non-exclusive license (“License”) to enter upon, use and occupy the Premises for the purpose of the construction, installation, maintenance, improvements, and operation of a photovoltaic solar power electric generation system (“System”) on a portion of Stewart International Airport (“Site”). Such License shall be in effect until the end of the Term under this Agreement.

_____ (“Provider”)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY (“Host”)

Re: Proposed Solar Power Installations at Stewart International Airport (“Site”)

Host hereby grants to Provider and its representatives, contractors, subcontractors, servants, agents, employees, contractors and subcontractors (collectively, the “Provider”) a non-exclusive license (the “License”) to enter upon, use and occupy the Premises for the purpose of the construction, installation, maintenance, improvements and operation of the System on the Site.

The License shall be effective for the same term as the Term of the Agreement and shall be irrevocable during the Term and any extensions thereof. In addition, the License shall remain in effect for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days after the Term, for the sole purpose of removing the System and restoring the Premises pursuant to the Agreement.

The License shall be for the sole purposes of constructing, installing, operating, improving and maintaining the System, including reasonable access to, on, over, under and across the Site during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises, consistent with operational needs of the Premises, as set forth in Section 7.2(d) of the Agreement.

Provider shall contract directly with appropriate providers for utility services, if necessary, for the operation of the System.

Provider shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or government rule or regulation now in force or which may hereafter to be enacted or promulgated. Provider shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, government rules, regulations, or requirements relating to the Provider’s use or occupancy of the Premises. Provider acknowledges that, except as otherwise provided for in the Agreement, Host has made no representations or warranties concerning the Premises and Provider shall be deemed to have inspected the Premises and accepted it in “as is” condition.

The Provider shall not sell, transfer, mortgage, pledge, subcontract or assign this License or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by any independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.

Any attempt by Provider to assign the License in violation of this provision shall automatically terminate the License.

Provider and Host further acknowledge and agree that:

1. The System is the personal property of Provider, and shall not be considered the property (personal or otherwise) of Host upon installation of the System at the Premises. The System is more particularly described in the Specifications. Notwithstanding the above, the System would become the property of the Host upon purchase of the System by the Host, as set forth in the Agreement.
2. Provider or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under the Agreement. Host will not charge Provider any rent for such right to access the Premises.
3. Host will not take any action inconsistent with the foregoing.

EXHIBIT C: PROVIDER'S INSURANCE REQUIREMENTS

(Documentation of Proposer Insurance as required by Attachment G of the RFP)