

**Solar Power Purchase  
Agreement Cover Page &  
Signatures**

This Solar Power Purchase Agreement (“PPA”) is entered into by the entities listed below (each a “Party” and collectively the “Parties”) as of XXXXXXXX, 2025 (the “Effective Date”).

<b>State of New Jersey, Department of the Treasury, Division of Purchase and Property</b>		<b>Vendor {Contractor}:</b>	XXXXXXXXXXXXXXXXXXXX
<b>Using Agency</b>	XXXXXXXXXXXXXXXXXXXX		
<b>Address</b>	XXXXXXXXXXXXXXXXXXXX	<b>Address</b>	XXXXXXXXXXXXXXXXXXXX
<b>Phone</b>	( ) -	<b>Phone</b>	XXXXXXXXXXXXXXXXXXXX
<b>State Contract Manager</b>	William Golubinski	<b>Vendor {Contractor} Contact Person</b>	XXXXXXXXXXXXXXXXXXXX
<b>Fax</b>	None	<b>Fax</b>	XXXXXXXXXXXXXXXXXXXX
<b>E-mail</b>	<a href="mailto:William.Golubinski@treas.nj.gov">William.Golubinski@treas.nj.gov</a>	<b>E-mail</b>	XXXXXXXXXXXXXXXXXXXX
<b>Premises Ownership</b>	The State of New Jersey owns certain property located at XXXXXXXXXXXXXXX, as more particularly depicted on the attached Exhibit 3 and incorporated by reference herein (the “Premises”).	<b>Additional Vendor {Contractor} Information</b>	XXXXXXXXXXXXXXXXXXXX
<b>Required Subcontractors:</b>	<b>Subcontractor Name</b>	<b>Subcontractor Address</b>	<b>Subcontractor contact person, phone number and email</b>
<b>Roofing: Y/N</b>	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Electrical: Y/N</b>	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Architect: Y/N</b>	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Engineer: Y/N</b>	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Steel Erector: Y/N</b>	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

This PPA sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the interconnected system of solar photovoltaic panels and associated necessary supporting structures and wiring described in **Exhibit 2** (the "System"), and installed on the area or areas of the Premises outlined in red on **Exhibit 3** (the "Facility").

The exhibits listed below are incorporated by reference and made part of this PPA.

- Exhibit 1** Basic Obligations
- Exhibit 2** System Description
- Exhibit 3** Premises, Facility and System Layout
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Termination Payment Schedule
- Exhibit 6** Bid Proposal Form

Vendor {Contractor}: **XXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXXXXXXXX**

**The State of New Jersey Department of Treasury  
Division of Purchase and Property**

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The State of New Jersey  
Department of Treasury  
Division of Property Management  
& Construction**

Approved as to form only:  
**MATTHEW J. PLATKIN**  
Attorney General of New Jersey

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Brad M. Reiter  
Deputy Attorney General  
Date: **MMMMMMMMMM DD, YYYY**

**The State of New Jersey  
Department of XXXXXXXXXXXXX**

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit 1**  
**Basic Obligations**

1. **PPA Term:** Twenty (20) years from the Commercial Operation Date as defined in Section 3 of Exhibit 4.
2. **Additional Terms:** Up to **two (2)** Additional Terms of **five (5)** years each.
3. **Environmental Incentives, Tax Credits and Environment Attributes:** Accrue to Vendor {Contractor}.
4. **Total Rate:**

Contract Year	\$/kWh
1	0.XXXXX
2	0.XXXXX
3	0.XXXXX
4	0.XXXXX
5	0.XXXXX
6	0.XXXXX
7	0.XXXXX
8	0.XXXXX
9	0.XXXXX
10	0.XXXXX
11	0.XXXXX
12	0.XXXXX
13	0.XXXXX
14	0.XXXXX
15	0.XXXXX
16	0.XXXXX
17	0.XXXXX
18	0.XXXXX
19	0.XXXXX
20	0.XXXXX

5. **Condition Satisfaction Date:** July 1, 2023
6. **Commercial Operation Date:** July 1, 2024
7. **System Installation:**

Includes:	<input checked="" type="checkbox"/> Design, engineering, permitting, installation, monitoring, rebate application and paperwork processing of the System.  <input type="checkbox"/> Limited Warranty.  <input type="checkbox"/> List of Approved Subcontractors <input type="checkbox"/> Any like substantive equipment <input checked="" type="checkbox"/> State or Utility Rebate, if any. Describe: <b>NJ SREC II</b>  <input checked="" type="checkbox"/> Security Instrument  <input checked="" type="checkbox"/> Bid Bond, Performance Bond, Payment Bond.
Excludes:	Nothing

**Exhibit 2**  
**System Description**

1. System/Site Location: **XXXXXXXXXX, XXXXXX, NJ 0XXXX** .

2. System Size (DC kW): **X,XXX** .

3. Expected First Year Energy Production (kWh): **XXX,XXX** .

4. Expected Structure:  Ground Mount  Roof Mount  Parking Structure  Other

5. Expected Module(s):

<u>Manufacturer/Model</u>	<u>Quantity</u>
<b>XXXXXXXXXXXXXXXXXXXXXXXXXX</b>	<b>X,XXX</b>

6. Expected Inverters .

<u>Manufacturer/Model</u>	<u>Quantity</u>
<b>XXXXXXXXXXXXXXXXXXXXXXXXXX</b>	<b>XX</b>

7. Premises, Facility and System Layout: See Exhibit 3.

8. Utility: **PSE&G** .

**Exhibit 3**  
Premises, Facility and System  
Layout

An Aerial Photograph of the Premises and the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	Delivery points as labeled below by Meters 1, 2, 3
Access Points	To be agreed upon by Parties during pre-construction stage and according to project array phasing.



**Exhibit 4**  
**Solar Power Purchase Agreement**  
**General Terms and Conditions**

**1. PREAMBLE**

This PPA is subject to and entered into under the terms and conditions set forth in the Master Blanket Purchase Order (Blanket P.O.) awarded to Vendor {Contractor} pursuant to the Bid Solicitation T3104, Bid # 18DPP00260, (Bid Solicitation). This PPA hereby incorporates by reference all of the terms and conditions of the Blanket P.O. and Bid Solicitation and the parties agree to be bound by them in addition to the terms set forth in this PPA. This PPA memorializes the site-specific engagement described in this PPA. The scope of work involves the installation and maintenance of the System at the Facility as set forth in this PPA. The installation is to be performed by the Vendor {Contractor}, and subject to the Using Agency's agreement to purchase electricity generated on site from these panels from the Vendor {Contractor} for a period set forth in the PPA Term in Exhibit 1 at the Total Rate set forth in Exhibit 1.

This document along with its Exhibits constitute the PPA between Onyx Development Group LLC (the "Vendor {Contractor}") and NJ Department of Transportation (the "Using Agency"), for work to be performed at the Facility, and for the purchase of electrical power for the same Facility.

**2. Definitions and Interpretation**

Unless otherwise defined or required by the context in which any term appears:

- a. the singular includes the plural and vice versa;
- b. the words "herein," "hereof" and "hereunder" refer to this PPA as a whole and not to any particular section or subsection of this PPA;
- c. references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and
- d. the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this PPA are strictly for convenience and shall not be considered in interpreting this PPA.

**3. TERM**

- a. PPA Term: The Term of this PPA ("PPA Term") shall commence on the Commercial Operation Date and continue for the length of time specified in Exhibit 1 of this PPA unless earlier terminated or extended as provided for in Section 3.b of this PPA. The "**Commercial Operation Date**" is the date Vendor {Contractor} gives the Using Agency written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless the Using Agency reasonably objects within twenty-five (25) days of the date of such notice. This PPA is effective as of the Effective Date set forth in the Cover Page of this PPA.
- b. Additional PPA Term: Prior to the end of the PPA Term, either Party may give the other Party written notice of its desire to extend the PPA Term, subject to the same terms and conditions set forth herein for the number and length of additional periods, as agreed by the Parties (each such additional period, an "Additional PPA Term").

Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the PPA Term or the then current Additional PPA Term, as applicable. The Party receiving the notice requesting an Additional PPA Term shall respond positively or negatively to that request in writing thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional PPA Term. If both Parties agree to an Additional PPA Term, the Additional PPA Term shall begin immediately upon the conclusion of the PPA Term or the then current term on the same terms and conditions as set forth in this PPA. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this PPA shall terminate at the end of the PPA Term (if the same has not been extended) or the then current Additional PPA Term. The Additional terms shall be limited to two Additional PPA Terms lasting five years each. The Total Rate applicable during any Additional PPA Term shall continue from the prior agreement unless it can be mutually agreed upon by the Parties.

**4. PURCHASE AND SALE OF ELECTRICITY**

- a. The Using Agency shall purchase from Vendor {Contractor}, and Vendor {Contractor} shall sell to the Using Agency, all of the electrical energy generated by the System during the PPA Term and any Additional PPA Term(s) (collectively referred

to hereinafter as the “Term”). Electrical energy generated by the System will be delivered to the Using Agency at the delivery point identified in Exhibit 3 (the “Delivery Point”). The Using Agency shall take title to the electrical energy generated by the System at the Delivery Point. The Using Agency may purchase electrical energy for the Facility from other sources if the electrical requirements at the Facility exceed the output of the System at any time. Any purchase, sale and/or delivery of electrical energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

In the event that the System generates more electrical energy than is required by the Facility, and/or more electrical energy than can be stored by the System, any excess generation by the Vendor will be credited by the utility to the Using Agencies electrical account and is considered Pro-Bono Publico.

## **5. BILLING AND PAYMENT**

### **a. MONTHLY CHARGES**

Subject to and dependent upon appropriations being made from time to time by the State Legislature, the Using Agency shall pay the Vendor {Contractor} monthly for the electrical energy generated by the System and delivered to the Delivery Point at the Total Rate as shown in Exhibit 1.

### **b. TOTAL RATE**

Except as otherwise provided in this PPA, the Total Rate shall be an all-inclusive charge, including all applicable taxes if any (the State and its Agencies are exempt from the Sales and Use Tax, See Section 16.6.2) maintenance, or other charges, fees, or surcharges, regardless of the term used to describe the charge. The Total Rate should also include the cost of the System, and its installation. The only expense to the State or the Using Agency for the entirety of performance under this PPA and the Agreement as a whole shall be the monthly payment of the Total Rate. The monthly payment will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

### **c. MONTHLY INVOICES**

Vendor {Contractor} shall invoice the Using Agency monthly through the Using Agency’s designated third-party electronic billing/ACH Vendor. Such monthly invoices shall state, at a minimum: (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, the Using Agency under this PPA and (iii) the total amount due from the Using Agency.

### **d. PAYMENT TERMS**

All amounts due under this PPA shall be paid in a manner consistent with the New Jersey Prompt Payment Act, N.J.S.A. 52:32- 32, et seq. (See Section 16.6.5). The payment date shall not be more than sixty (60) days from receipt of a properly executed invoice. Interest, if any, shall be paid in accordance with N.J.S.A. 52:32-34 and -35.

### **e. CUSTOMER SERVICE AND BILLING**

The Vendor {Contractor} shall ensure that it has in place the customer service staff required to bill the Using Agency accounts and receive and post payments in a timely and accurate manner, and shall designate a customer service representative to respond to questions and problems raised by the Using Agency.

The Vendor {Contractor} shall provide assistance to the Using Agency in connection with administration of the Using Agency accounts being served by the Vendor {Contractor} under this PPA. Such assistance shall include, at a minimum, sharing of information and data in order to respond to customer inquiries; as well as cooperating to resolve customer problems.

## **6. ENVIRONMENTAL ATTRIBUTES AND ENVIRONMENTAL INCENTIVES**

- a. Unless otherwise specified on Exhibit 1, Vendor {Contractor} is entitled to the benefit of all federal and state Environmental Attributes and Environmental Incentives, including Tax Credits. The Using Agency’s purchase of electricity under this PPA and/or the Blanket P.O. does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Vendor

{Contractor}, and should be considered when submitting pricing. The Using Agency shall reasonably cooperate with Vendor {Contractor} in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. The Using Agency shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Vendor {Contractor}. If any Environmental Incentives are paid directly to the Using Agency, the Using Agency shall promptly pay such amounts over to Vendor {Contractor}.

- b. Environmental Attributes - Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.
- c. Environmental Incentives - Any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.
- d. Tax Credits - Any and all (a) investment tax credits, (b) production tax credits, (c) depreciation benefits, and (d) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

## **7. VENDOR'S {CONTRACTOR'S} RIGHTS AND OBLIGATIONS**

### **a. ELECTRICAL GENERATING EQUIPMENT**

The Vendor {Contractor} shall provide any and all services related to the design, procurement, installation, maintenance, operation and eventual removal of the Systems at no additional cost to the State.

Design of Systems will be subject to DPMC Plan Review and other authorities having jurisdiction including but not limited to local fire department officials to ensure proper firefighting access and protective measures are provided. Shading analysis, structural analysis, interconnection requirements are also among the responsibilities of System design. Any approval required by the DPMC will not be unreasonably withheld, delayed or denied.

The Vendor {Contractor} shall design Systems to produce the capacity stipulated in Exhibit 2, System Description.

### **b. PERMITS AND APPROVALS**

Vendor {Contractor}, with the Using Agency's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system. All costs and expenses for such interconnection are the sole obligation of the Vendor {Contractor}.

The Using Agency shall cooperate with the Vendor {Contractor's} reasonable requests to assist Vendor {Contractor} in obtaining such agreements, permits and approvals.

**c. GRANT OF LICENSE FOR ACCESS**

The Using Agency hereby grants to Vendor {Contractor}, and any of its affiliates, contractors, or subcontractors who must perform any responsibility under this PPA, a limited license for access to the Premises as designated on **Exhibit 3** during the Term of this PPA to access, enter, cross, and use the Premises and the Facility for the limited purposes of (a) installing, maintaining, operating, repairing and removing the System; (b) vehicular and pedestrian access to the System sufficient to facilitate the installing, maintaining, operating, repairing and removing of the System; and (c) temporary parking of vehicles on the Premises as directed by the Using Agency for the foregoing limited purposes only (the "License"). The term of the License shall continue until the end of this PPA extending through the end of decommissioning or as earlier terminated pursuant to the terms of this PPA. The term of the License shall begin on the Effective Date of this PPA and continue until the end of this PPA extending through the end of decommissioning or as earlier terminated pursuant to the terms of this PPA.

**d. USE RIGHTS**

Vendor {Contractor's} right to use the Premises and the Facility during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and non-exclusive incidental purposes and activities, including but not limited to: (a) installing, maintaining, operating, repairing and removing the System on and from the Facility; (b) constructing and installing, maintaining, and removing supporting structures, including but not limited to ground fasteners, such as piles and posts, and all necessary below- and above- ground foundations; (c) accessing the Premises, Facility, and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing such security measures as set forth in this Contract to secure the System, which includes, but is not limited to, fencing around the System; and (e) installing, maintaining, operating, removing, replacing, and repairing on portions of the Premises and the Facility fiber optic cables, inverters, meters, electrical wires and cables required for the collection and transmission of electrical energy to and from the System. An authorized representative of the Using Agency shall have the right at all times during the Term to enter upon and inspect the Premises, the Facility, and the System so long as the System is not disturbed and remains secured. Except in the event of an emergency, the Using Agency shall, prior to inspecting the System, give at least 24 hours advanced notice, only inspect during regular business hours, and will comply with all applicable laws in connection with the Premises, and not tamper with, interfere, or disturb the System or Interconnection, or conduct or permit activities on the Premises that could damage, impair or adversely affect the System.

**e. TEMPORARY LAYDOWN AREA**

During the installation of the System, Vendor {Contractor} may temporarily use portions of the Premises as designated on **Exhibit 3** for the temporary storage of System components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the installation of the System, taking all commercially reasonable steps to maintain the Premises in compliance with county and municipal ordinances and regulations.

**f. CONSTRUCTION AND INSTALLATION OF SYSTEM**

The Vendor {Contractor} shall be solely responsible for all costs arising from and in connection with the construction and operation of the System and renovations to the Facility consistent with the technical specifications set forth in **Exhibit 2**. Vendor {Contractor} shall be responsible for obtaining all necessary construction permits required and shall submit all construction plans, drawings, etc. to the Using Agency for written approval prior to commencing any work.

- i. Vendor {Contractor} shall provide architectural and engineering services for the purpose of developing all necessary planning, construction, and design documents for construction and installation of the System on the Facility ("Design Documents"), the cost of which shall be paid for by the Vendor {Contractor}. Vendor {Contractor} acknowledges and understands that it is solely responsible for the conformance of said design documents to all applicable codes, regulations, or standards, including, but not limited to, all applicable safety standards.
- ii. Vendor {Contractor} must submit its final Design Documents for the System to the Using Agency for approval. If the proposed final Design Documents are not acceptable to the Using Agency, in whole or in part, by reason of the failure to comport with the Using Agency's specifications, any scope of work approved in writing by the Using Agency during negotiations, or any applicable laws, codes or governmental requirements, the Using Agency shall notify the Vendor {Contractor} of its disapproval of the Design Documents within ten (10) working days of its receipt,

specifying the basis for such disapproval in writing. The Vendor {Contractor} shall submit revised proposed final Design Documents within five (5) working days of receipt of the Using Agency's written notice of disapproval, as necessary, provided that the nature of the changes required reasonably does not require more than five (5) working days for redesign and preparation of revised Design Documents, in which event the Vendor {Contractor} shall submit revised Design Documents with all reasonable diligence. In the event the Vendor {Contractor} fails to respond to, cure, or resolve the Using Agency's good faith objections to the proposed final Design Documents following a third submission of revised proposed final Design Documents by the Vendor {Contractor}, the Vendor {Contractor} hereby agrees that the Using Agency shall be entitled to give the Vendor {Contractor} final written notice of a "Failure to Provide Satisfactory Construction Plans". In the event the Vendor {Contractor} fails to cure or commence to cure such failure(s) within thirty (30) days following the Failure to Provide Satisfactory Construction Plans notice, the Vendor's {Contractor's} failure to respond to, cure, or resolve the Using Agency's good faith objections within the thirty (30) day period established by the written notice shall entitle the State to terminate this PPA without any liability to the Using Agency.

- iii. In no event shall the construction and installation of the System compromise the integrity of the roof of the Facility.
- iv. Upon completion of the installation, repair and Decommissioning of the Facility and the System, Vendor {Contractor} will replace any distributed soil or vegetation, and restore the Premises and areas in and around the Premises to the condition in place as of the Effective Date, as commercially reasonable. Vendor {Contractor} shall immediately repair, replace, or reimburse the Using Agency for any damage to the Premises caused by Vendor's {Contractor's} negligent acts or omissions on the Premises. Vendor's {Contractor's} rights under this PPA include the non-exclusive License for ingress to and egress from the Premises for the installation and maintenance of the Facility and the System, so long as they do not interfere with the overall condition and use of the road network to the Premises.
- v. For all submittals and approvals required by this section, the Parties will follow the time requirements set forth in 3.1.J of the Site-Specific Summary provided at the time of bid. All Using Agency approvals required by this section shall not be unreasonably withheld, conditioned or delayed.

**g. STANDARD FACILITY AND SYSTEM REPAIR AND MAINTENANCE**

- i. Vendor {Contractor} will perform all required routine and emergency repairs to, and maintenance of, the System and to the Facility (if the routine and emergency repairs and maintenance to the Facility are required because of the System) at its sole cost and expense. Vendor {Contractor} shall not be responsible for any repairs or maintenance that are solely caused by the Using Agency's negligence, or intentional misconduct or breach of this PPA or the Agreement as a whole. In such an event, Vendor {Contractor} shall perform the necessary repairs due to such negligence, misconduct or breach at the Using Agency's cost, provided such costs are usual, customary, and cost effective.
- ii. Vendor {Contractor} shall, at its sole cost, maintain the area of and immediately adjacent to the System in a clean and orderly condition which shall include, but not be limited to, cutting the grass and removing weeds. Vendor {Contractor} shall, at its sole cost and expense, maintain the System in good condition and repair.
- iii. Vendor {Contractor} shall, at its sole cost, ensure that the Facility and the System remains interconnected to the Utility's electric distribution system at all times and will not cause or contribute to cessation of electric service to the Facility from the Utility, unless such disconnection is necessary for routine or emergency repairs or maintenance to the System.
- iv. Vendor {Contractor} shall not be responsible for any work done by others on any part of the Facility or the System unless Vendor {Contractor} authorizes such work in writing, in advance. Vendor {Contractor} shall provide the Using Agency with reasonable notice prior to accessing the Premises to make non-emergency repairs and regular maintenance, which reasonable notice shall be given at least 24 hours prior to access; provided, that in certain cases up to five (5) business days prior to the work. In the event of an emergency, Vendor {Contractor} shall only be required to provide advanced notice as is reasonable under the circumstances.
- v. Notwithstanding anything to the contrary herein, Vendor {Contractor} shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this PPA; provided that Vendor {Contractor} shall use reasonable efforts to minimize any interruption in service to the Facility, and shall provide the Using Agency with as much notice of the suspension of delivery of electricity as practicable under the circumstances, which for routine

maintenance or repair, shall be at least 24 hours; provided, that in certain cases up to five (5) business days' prior notice may be required depending upon the work to involved and the for the Using Agency personnel to be present.

- vi. Non- Standard System Repair. Any non-standard system repair shall be performed in accordance with Section 13.d. below.

**h. SYSTEM DAMAGE.**

If the System is damaged or destroyed other than by the Using Agency's gross negligence or willful misconduct, the Vendor {Contractor} shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the PPA Term or during any Additional PPA Term (as permitted by law, if any), the Vendor {Contractor} shall not be required to restore the System, but may instead terminate this PPA, unless the Using Agency agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) for any given Contract Year, the amount set forth on Exhibit 5 attached hereto.

**i. WARRANTY**

Vendor {Contractor} warrants that during the Term of this PPA, the System shall provide the Minimum Guaranteed Annual Energy Production listed on the Bid Proposal Form, attached hereto as Exhibit 6, each twelve (12) month period after the Commercial Operating Date. Within sixty (60) days following each twelve (12) month period after the Commercial Operating Date (each a "Contract Year"), the Parties shall compare the System's generating capacity for such immediately preceding Contract Year with the Minimum Guaranteed Annual Energy Production for that same Contract Year. To the extent that the actual generating capacity for the Contract Year is less than the Minimum Guaranteed Annual Energy Production for that same Contract Year (except to the extent caused by Force Majeure Events or through acts and or omissions of the Using Agency), then Vendor {Contractor} shall credit the Using Agency with a dollar amount equal to the product of (1) the difference between the (i) the Utility kWh Cost for the Contract Year during which Actual Annual Production fell short of the generating capacity for that Contract Year and (ii) the kWh Rate for energy provided by Vendor {Contractor} for the same Contract Year pursuant to this PPA, multiplied by (2) the difference in kWh between the Mniium Guaranteed Annual Energy Production and the actual generating capacity for the same Contract Year.

**j. UTILITIES**

As permitted by the Utility servicing the Facility, Vendor {Contractor} shall furnish, install and pay for a separate electrical meter to be billed to the Vendor {Contractor} directly. If this is unacceptable to the Utility, Vendor {Contractor} shall furnish and install, at its sole cost and expense, an electrical sub-meter at the Facility for the measurement of electrical power used by Vendor {Contractor} during the Term, which sub-meter must comply with all applicable State laws and regulations. Vendor {Contractor} shall pay to the Using Agency, as a credit on each monthly invoice, for its own power consumption thirty (30) days after receipt of an invoice from the Using Agency indicating the amount of energy used, at the local utility company rate.

**k. DATA LINE**

Vendor {Contractor} shall provide, at its sole cost, a high speed internet data line from the Facility during the Term to enable Vendor {Contractor} to record the electrical energy generated by the System subject at all times to the terms and conditions of this PPA. Vendor {Contractor} shall make this data available to the Using Agency in real time at no charge.

**l. BREAKDOWN NOTICE**

Vendor {Contractor} shall notify the Using Agency as soon as reasonably practicable, but in no instance greater than within twenty-four (24) hours following Vendor's {Contractor's} discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Vendor {Contractor} shall designate personnel and establish procedures to provide notice to the Using Agency of such conditions requiring Vendor's {Contractor's} repair or alteration and shall at all times, twenty-four (24) hours per day, including weekends and holidays, perform repair and alteration to the System to restore reliable operation of the System. Vendor {Contractor} shall notify the Using Agency immediately upon the discovery of an emergency condition affecting the System or affecting the Using Agency's regular use of its facilities that rely on the System.

**m. LIENS AND PAYMENT OF CONTRACTORS AND SUPPLIERS**

Vendor {Contractor} shall pay when due all valid charges from all Vendors {Contractors}, subcontractors and suppliers supplying goods or services to Vendor {Contractor} and shall keep the Premises and the Facility free and clear of any liens related to such charges. Vendor {Contractor} shall indemnify the Using Agency for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Premises and the Facility in connection with such charges; provided, however, that Vendor {Contractor} shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Premises and the Facility or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Premises and the Facility.

**n. SECURITY**

Vendor {Contractor} shall, at its sole cost, be responsible for securing and maintaining the physical security of the System against known risks and risks that should have been known by Vendor {Contractor} which measures may include, but are not limited to, the installation of fencing around the perimeter of the System.

**o. PAYMENT BOND AND PERFORMANCE BONDS**

- i. A payment bond and performance bond shall be provided by the Vendor {Contractor} prior to any work beginning under this PPA if not previously provided with the Engagement Response.
- ii. Within ten (10) calendar days after the award by the Vendor {Contractor} of a subcontract to a Subcontractor, the Vendor {Contractor} shall require the Subcontractor to provide both a performance bond in an amount equal to one hundred percent (100%) of the total subcontract price as security for the faithful performance of the subcontract and a payment bond in amount equal to one hundred percent (100%) of the subcontract price as security for the payment of all persons and firms performing labor and furnishing materials in connection with the subcontract. The performance bond and the payment bond may be combined or in separate instruments in accordance with law. If combined, they must be for 200% of the subcontract amount. No subcontract shall be executed unless and until each bond is submitted to and approved by the State. The surety must be presently authorized to do business in the State of New Jersey and on the list of approved surety companies maintained by the New Jersey Department of Business and Insurance. In addition to the other coverage provided, the Bond shall cover all subcontract guarantees and any other guarantees/warranties issued by the Subcontractor. Performance and payment bonds must be legally effective as of the date the subcontract is signed. Each must indicate the Subcontractor's name exactly as it appears on the subcontract. Current attorney-in-fact instruments and financial statement of the surety must be included with the bonds. Bonds must be executed by an authorized officer of the surety.
- iii. The State of New Jersey shall be named as additional obligee on the bonds.
- iv. The cost of all performance and payment bonds shall be paid for by the Engagement Subcontractor.

**p. Metering**

- i. The Using Agency will not be required to install, or pay for the installation of, any new metering equipment. All fees related to the maintenance and installation of any meters shall be incorporated into the proposed electrical rates and will not be permitted to appear as separate billing line items on the electric bills submitted by the Vendor {Contractor}. The State and each applicable Electrical Distribution Company ("EDC") will retain the existing metering technology at the facility, unless upgraded metering is required and installed by the EDC at the EDC's expense. The Vendor {Contractor} may, at its own cost and with the approval of the State, install additional metering that complies with utility regulations provided that, a) utility company must approve the additional metering, if applicable; b) the State is aware of its existence and is notified in writing thirty (30) calendar days prior to installation by the Vendor {Contractor}; c) has access to the data generated from this meter; d) is not bound by any data generated from the non-utility meter; and e) the Using Agency incurs no financial expense associated with the metering.
- ii. The System meter shall be tested, at the Vendor's {Contractor's} expense, by Vendor {Contractor} personnel duly certified to be qualified to perform such tests: (a) at least once annually and (b) at the Using Agency's request in the event of a billing discrepancy in excess of three percent (3%) between the System meter and the EDC meter. Written reports of such tests will be provided to the Using Agency within thirty (30) days of receipt by Vendor {Contractor} of the test results. If the System meter is found to be inaccurate by more than three percent (3%), the Vendor {Contractor} shall correct the System meter and the Using Agency's invoices shall be adjusted for the period beginning on the date when the inaccuracy above three percent (3%) commenced.

The Using Agency will have access to meter data through an internet application provided by the Vendor {Contractor}.

**q. CONDITIONS TO OBLIGATIONS**

- i. CONDITIONS TO VENDOR'S {CONTRACTOR'S} OBLIGATIONS

Vendor's {Contractor's} obligations under this PPA are conditioned on the completion by the Vendor {Contractor} of the following conditions to Vendor's {Contractor's} reasonable satisfaction on or before the Condition Satisfaction Date:

- a. Physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- b. Approval of (1) (A) this PPA and (B) the Construction Agreement (if any) for the System by Vendor's {Contractor's} Financing Parties and (2) the final Design Documents for the System by the Using Agency. "Construction Agreement" as used in this subsection means an agreement between Vendor {Contractor} and any contractor or subcontractor to install the System;
- c. Confirmation that Vendor {Contractor} will obtain all applicable Environmental Incentives and Tax Credits;
- d. Receipt of all necessary zoning, land use and building permits; and
- e. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system.

ii. **FAILURE OF CONDITIONS**

If any of the conditions listed in subsection (i) are not satisfied by the Condition Satisfaction Date, the Parties will attempt, in good faith, to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then Vendor {Contractor} may terminate this Agreement upon ten (10) days written notice to the Using Agency without liability for costs or damages or triggering a default under this PPA. All Parties must make commercially reasonable efforts to cure the failing conditions and/or to negotiate the new dates.

r. **Financing Party**

The Parties acknowledge that Vendor {Contractor} or an affiliate may obtain financing or other credit support from one or more financing parties in respect of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this PPA that may be reasonably requested by such financing parties; provided, that such changes do not alter the fundamental economic terms of this PPA. Nothing in the paragraph shall require the State/Using Agency to make any changes requested by a financing party. Within 10 business days after receipt of a written request by Vendor {Contractor}, the State / Using Agency agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to the Parties and such financing parties. Upon notice to the State / Using Agency of a financing party, the State / Using Agency agrees to provide such financing party a copy of any notice of default of Vendor {Contractor} under this PPA and permit such financing party to cure any such default on behalf of Vendor {Contractor} in accordance with the timeframe provided herein.

**8. THE USING AGENCY'S RIGHTS AND OBLIGATIONS**

a. **MAINTENANCE OF ELECTRICAL EQUIPMENT, WIRING**

The Using Agency is responsible for the maintenance and repair of the Facility's electrical network (excluding the System) and of all of the Using Agency's equipment that utilizes the System's outputs, including any. The Using Agency shall properly maintain all of the Using Agency's electrical supply or backup generation equipment that the Using Agency may shut down while utilizing the System. The Using Agency shall promptly notify Vendor {Contractor} of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. If, due to a Using Agency equipment failure, a shutdown of the system occurs for a total of forty-eight (48) daylight hours per calendar year, the Vendor {Contractor} shall be compensated pursuant to Section 8.b. below.

b. **ALTERATIONS**

The Using Agency shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without five (5) business days' written notice to the Vendor {Contractor} (except for emergency repairs, for which notice may be given at a time and in a manner appropriate to the circumstances), setting forth the alteration or repair to be undertaken. Such notice shall give the Vendor {Contractor} the opportunity to advise the Using Agency in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, the Using Agency shall, consistent with and pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq, and the New

Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., be responsible for all damage to the System caused by the Using Agency or its officers, employees, agents or contractors.

- i. To the extent that temporary disconnection or removal of the System may be necessary to perform alterations or repairs to the Facility, such disconnection and/or re-connection and/or re-installation of the System after completion of the Using Agency's alterations and repairs shall be done by Vendor {Contractor} or its contractors at the Using Agency's cost provided such costs are commercially reasonable.
- ii. If such alterations or repairs require the Vendor {Contractor} to disconnect the System for a total of forty-eight (48) daylight hours per calendar year, the Using Agency shall pay Vendor {Contractor} an amount equal to the sum of:
  - a. Payments that the Using Agency would have made to Vendor {Contractor} hereunder for electrical energy that would have been produced by the System during such disconnection or removal;
  - b. Revenues that Vendor {Contractor} would have received with respect to the System under the any rebate program and any other assistance program with respect to electrical energy that would have been produced during such disconnection or removal;
  - c. Revenues from Environmental Attributes that Vendor {Contractor} would have received with respect to electrical energy that would have been produced by the System during such disconnection or removal; and
  - d. Tax Credits that Vendor {Contractor} (or, if Vendor {Contractor} is a pass-through entity for tax purposes, Vendor's {Contractor's} owners) would have received with respect to electrical energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 9.b.
- iii. All of the Using Agency's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable State and federal laws, regulations codes and permits.

**c. OUTAGES**

The System shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "Scheduled Outage") per calendar year during the Term, during which hours the Using Agency shall not be obligated to accept or pay for electricity from the System; provided, however, that the Party causing the Scheduled Outage shall provide notice to the other Party in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, the Using Agency shall pay Vendor {Contractor} an amount equal to the sum of:

- i. Payments that the Using Agency would have made to Vendor {Contractor} hereunder for electrical energy that would have been produced by the System during such outage;
- ii. Revenues that Vendor {Contractor} would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage;
- iii. Revenues from Environmental Attributes that the Vendor {Contractor} would have received with respect to electrical energy that would have been produced by the System during the outage; and
- iv. Tax Credits that Vendor {Contractor} (or, if Vendor {Contractor} is a pass-through entity for tax purposes, Vendor's {Contractor's} owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 9.b.

**d. LIENS**

The Using Agency shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. The Using Agency shall notify Vendor {Contractor} in writing of the existence of any such mortgage, pledge, lien, charge,

security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Vendor {Contractor}.

e. **INSOLATION**

The Using Agency understands that unobstructed access to sunlight (“Insolation”) is essential to Vendor’s {Contractor’s} performance of its obligations, the performance of the System, and a material requirement of this PPA and the Agreement as a whole. The Using Agency shall not cause and, where reasonably possible, shall not permit any interference with the System’s Insolation. If the Using Agency becomes aware of any activity or condition that could diminish the Insolation of the System, the Using Agency shall notify the Vendor {Contractor} immediately and shall cooperate with the Vendor {Contractor} in preserving the System’s existing Insolation levels.

f. **CONDITIONS TO USING AGENCY’S OBLIGATIONS**

The Using Agency’s obligations under this Section are conditioned on the occurrence of the Commercial Operation Date for the System.

9. **RELOCATION OF SYSTEM**

a. **SYSTEM RELOCATION**

If the Using Agency ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, the Using Agency shall have the option to provide the Vendor {Contractor} with a mutually agreeable substitute premises located within the same utility district as the terminated System or in a location with similar utility rates and Insolation. The Using Agency shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it plans to vacate the Premises or the Facility. In connection with such substitution, the Using Agency shall execute a revised substitute agreement that shall have all of the same terms as this PPA except for the (i) effective date; (ii) the license, which will be amended to grant access in the substitute premises where the System is relocated to; and (iii) term, which will be equal to the remainder of the Term of this PPA calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this PPA without termination. If applicable, the Using Agency shall also provide any new consents, certifications or acknowledgments reasonably required by the Parties in connection with the substitute premises and the revised substitute agreement.

b. **COSTS OF RELOCATION**

The Using Agency shall pay all reasonable costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Vendor {Contractor} in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of any other out-of-pocket expenses connected to preserving and refiling the interests of Vendor {Contractor} or its affiliates with regard to the System. In addition, the Using Agency shall pay Vendor {Contractor} an amount equal to the sum of (i) payments that the Using Agency would have made to Vendor {Contractor} hereunder for electrical energy that would have been produced by the System during the relocation; (ii) revenues that Vendor {Contractor} would have received with respect to the System under the any rebate program and any other assistance program with respect to electrical energy that would have been produced during the relocation; (iii) revenues from Environmental Attributes that Vendor {Contractor} would have received with respect to electric energy that would have been produced by the System during the relocation; and (iv) Tax Credits that Vendor {Contractor} (or, if Vendor {Contractor} is a pass-through entity for tax purposes, Vendor’s {Contractor’s} owners) would have received with respect to electrical energy that would have been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Vendor {Contractor} and the Using Agency mutually agree to an alternative methodology.

c. **ADJUSTMENT FOR INSOLATION; TERMINATION**

In the event that the Using Agency decides to relocate during the Term, Vendor {Contractor} shall remove the System from the vacated Facility prior to the termination of the Vendor’s {Contractor’s} ownership, lease or other rights to use such Facility. Vendor {Contractor} will be required to restore the Facility to its prior condition in accordance with Section 11 of

this PPA. If the substitute facility has inferior Insolation as compared to the original Facility, Vendor {Contractor} shall have the right to make an adjustment to **Exhibit 1** such that the Using Agency's payments to Vendor {Contractor} are the same as if the System were located at the original Facility, increased to the extent necessary to compensate Vendor {Contractor} for reduced revenues from Environmental Attributes and reduced Tax Credits that Vendor {Contractor} (or, if Vendor {Contractor} is a pass-through entity for tax purposes, Vendor's {Contractor's} owners) receive as a result of the relocation. If the Using Agency is unable to provide such substitute facility and to relocate the System as provided, then the Parties may terminate this PPA at which time the Termination Payment shall be due pursuant to the schedule provided for in Exhibit 5 .

## **10. OWNERSHIP, OPTION TO PURCHASE**

### **a. OWNERSHIP OF EACH SYSTEM**

Throughout the PPA term, Vendor {Contractor} shall be the legal and beneficial owner of the system at all times, including all environmental attributes and the system shall remain the property of Vendor {Contractor} and shall not attach to or be deemed a part of, or fixture to, the facility or the premises. The parties agree that the Vendor {Contractor} (or the designated assignee of Vendor {Contractor} if permitted under this PPA) is the tax owner of the system and all tax filings and reports will be filed in a manner consistent with this agreement. The system shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. The Using Agency covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the facility or 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 prospectively attaching to the system as a fixture of the premises, the Using Agency shall provide a disclaimer or release from such lienholder. If the Using Agency is the Fee Owner of the premises, the Using Agency consents to the filing 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 where the facility is located. If the Using Agency is not the Fee Owner, the Using Agency will obtain such consent from such owner. Upon request, the Using Agency agrees to deliver to the Vendor {Contractor} a non-disturbance agreement in a form reasonably acceptable to the Vendor {Contractor} from the owner of the facility (if the facility is leased by Using Agency), any mortgagee with a lien on the premises, and other persons or entities holding a similar interest in the premises.

### **b. OPTION TO PURCHASE**

At the end of the PPA term, and at the end of each additional PPA term, if any, so long as the Using Agency is not in default under this PPA, the Using Agency may purchase the system from the Vendor {Contractor} on any such date for a purchase price equal to the fair market value as defined below of the system. The Using Agency must provide a notification to the Vendor {Contractor} of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable contract year or the PPA term or additional term, as applicable, and the purchase shall be complete prior to the end of the applicable contract year or the PPA term or additional term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Vendor {Contractor} shall not provide any warranty or other guarantee regarding the performance of the system, provided, however, that Vendor {Contractor} shall assign to the Using Agency any manufacturers' warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.

### **c. DETERMINATION OF FAIR MARKET VALUE**

"Fair market value" means, in Vendor {Contractor's} reasonable determination, the greater of: (i) the amount that would be paid 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, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) the present value (using a discount rate of eight percent (8%) of all associated future income streams expected to be received by Vendor {Contractor} arising from the operation of the System for the remaining PPA term including but not limited to the expected price of electricity, environmental attributes, and tax credits and factoring in future costs and expenses associated with the System avoided]. Vendor {Contractor} shall determine fair market value within thirty (30) days after the Using Agency has exercised its option to purchase the System. Vendor {Contractor} shall give written notice to the Using Agency of such determination, along with a full explanation of the calculation of fair market value, including without limitation, an explanation of all assumptions, figures and values used in

such calculation and factual support for such assumptions, figures and values. If the Using Agency reasonably objects to Vendor's {Contractor's} determination of fair market value within thirty (30) days after Vendor {Contractor} has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the fair market value of the System. Such appraiser shall act reasonably and in good faith to determine the fair market value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, the Using Agency will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Vendor {Contractor} shall have no further liabilities or obligations for that System, Facility or Premises.

## **11. DECOMMISSIONING OF SYSTEM AT EXPIRATION**

- a. Upon the end of the Term or earlier termination of this PPA, Vendor {Contractor} shall, at its expense, Decommission and remove all of its tangible property comprising the System from the Facility on a mutually convenient date, provided that the decommissioning and removal must begin no later than thirty (30) days after the expiration of the Term and must be complete within 180 days from the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Vendor's {Contractor's} Decommissioning of the System affect the integrity of the Using Agency's roof, which shall be as leak proof as it was prior to Decommissioning and shall be flashed and/or patched to existing roof specifications. Vendor {Contractor} shall leave the Facility in neat and clean order. The Parties shall conduct Decommissioning inspection of the Facility at least fifteen (15) days prior to the expiration or earlier termination of this PPA in order to compile a list of items that Vendor {Contractor} is required to complete.
- b. If Vendor {Contractor} fails to attend the Decommissioning inspection or fails to Decommission or to commence substantial efforts to Decommission the System by such agreed upon date, the Using Agency shall have the right, at its option, to deem the System abandoned and dispose of same at Vendor {Contractor} sole cost and expense without being liable to Vendor {Contractor} for any damages. In such event, Vendor {Contractor} shall be responsible for all of the Using Agency's costs and expenses to Decommission the System and restore the Facility to its original condition (other than ordinary wear and tear).
- c. The Using Agency shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System Decommissioning.

## **12. MEASUREMENT**

Vendor {Contractor} shall install, at its sole cost and expense, one or more meter(s), as Vendor {Contractor} deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Vendor {Contractor} shall maintain the meter(s) in accordance with industry standards at Vendor's {Contractor's} sole cost and expense.

## **13. CLAIMS AND REMEDIES**

### **a. CLAIMS**

All claims asserted against the State by the Vendor {Contractor} shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. Except for the Vendor {Contractor} indemnification obligations, neither party will be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, or otherwise. If a party is required to pay liquidated damages, the Parties acknowledge that such damages are difficult or impossible to determine and that such damages constitute a reasonable approximation of the harm or loss. The Vendor {Contractor} makes no representations and warranties other than those expressly stated in this PPA. The Vendor {Contractor} expressly disclaims all warranties of merchantability, fitness for a particular purpose, and other implied warranties, obligations, and indemnities unless expressly state in this PPA.

### **b. REMEDIES**

Nothing in this PPA and Blanket P.O. shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

c. **REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL PPA REQUIREMENTS**

In the event that the Vendor {Contractor} fails to comply with any material requirements of the Blanket P.O. or this PPA, the Using Agency may request that the Director take steps to terminate this Blanket P.O. and/or PPA in accordance with section 16.5.7 of this PPA, authorize the delivery of Blanket P.O. and/or PPA items by any available means, with the difference between the price paid and the defaulting Vendor's {Contractor's} price either being deducted from any monies due the defaulting Vendor {Contractor} or being an obligation owed the State by the defaulting Vendor {Contractor}, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

d. **ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The Vendor {Contractor} shall not begin performing any additional work or special projects without first obtaining the State Contract Manager's recommendation and the Director's written approval.

In the event of additional work and/or special projects, the Vendor {Contractor} must present a written Quote to perform the additional work to the State Contract Manager. The Quote should provide justification for the necessity of the additional work. The relationship between the additional work and the base Blanket P.O. work must be clearly established by the Vendor {Contractor} in its Quote.

The Vendor's {Contractor's} written Quote must provide a detailed description of the work to be performed broken down by task and subtask. The Quote should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written Quote must detail the cost necessary to complete the additional work in a manner consistent with the PPA and/or Blanket P.O. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the Vendor {Contractor} in the Vendor's {Contractor's} original Quote submitted in response to the bid solicitation. Whenever possible, the price schedule should be a firm, fixed price to perform the required work. The firm, fixed price should specifically reference and be tied directly to costs submitted by the Vendor {Contractor} in its original Quote. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the Vendor's {Contractor's} written Quote, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and Office of Information Technology.

**In the event the Vendor {Contractor} proceeds with additional work and/or special projects without the Director's written approval, it shall be at the Vendor's {Contractor's} sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.**

14. **FORCE MAJEURE**

- a. Force Majeure shall mean Acts of God; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; lightning; other abnormal weather conditions or natural catastrophes; radioactive contamination or ionizing radiation not caused by Vendor {Contractor}; strikes, lockouts or other industrial disturbances affecting employers other than Vendor {Contractor} or its affiliates; acts of public enemies; insurrections; military action; war, whether or not it is declared; sabotage; terrorist acts; riots; civil disturbances; explosions, unless caused by the acts or omissions of the affected Party; Changes in Law, acts or omissions of governmental authorities (including denial or failure to obtain or renew permits or authorizations through no fault of the affected Party); or any other cause or event, not reasonably within the control of the affected Party (other than the financial inability of such Party), which precludes such Party from carrying out, in whole or in part, its obligations under this PPA.
- b. Except as otherwise expressly provided to the contrary in this PPA, if either Party, using commercially reasonable efforts, is rendered wholly or partly unable to timely perform its obligations under this PPA because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event;

(ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term may be extended upon mutual agreement of the parties.

- c. If a Force Majeure event continues for a period of (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

## **15. CONFIDENTIALITY AND PUBLICITY**

### **a. OWNERSHIP OF MATERIAL**

#### **i. Ownership of Data**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this PPA, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this PPA shall be and remain the property of the Vendor {Contractor}. Once received, Vendor {Contractor} shall provide the Using Agency with signed, sealed as-built drawings of the System at no cost to the State.

#### **ii. Intellectual Property Rights in Deliverables – Excluding Software**

- a. If the Vendor {Bidder} anticipates using pre-existing intellectual property (“Background IP”) within the deliverables called for under the PPA, the Background IP must be identified in the Quote. If the Vendor {Bidder} identifies such Background IP in its Quote, then the Background IP owned by the Vendor {Bidder} on the date of this PPA and any modifications or adaptations thereto remain the property of the Vendor {Bidder}.
- b. If in the course of performance of the PPA, Vendor {Contractor} encounters a need to incorporate Background IP into a deliverable, but the Background IP was not identified in the Quote, the Vendor {Contractor} must notify the State Contract Manager in writing, identifying the specific Background IP to be incorporated into the deliverable, and requesting approval thereof. Where approval is granted in writing, the Background IP owned by the Vendor {Contractor} as well as any modifications or adaptations thereto remain the property of the Vendor {Contractor}. If approval is not granted, the parties will negotiate mutually acceptable intellectual property rights to accomplish the State’s goals for the affected deliverable(s).
- c. The Vendor {Contractor} grants the State a nonexclusive, irrevocable, royalty free license to use the Vendor’s {Contractor’s} Background IP delivered to the State for the purposes contemplated by this PPA.
- d. Vendor {Contractor} software computer programs and other methodologies used by Vendor {Contractor} in the preparation of deliverables called for under the PPA, but not incorporated into the deliverable itself do not need to be identified as Background IP, and the Vendor {Contractor} retains all ownership therein, as applicable.

#### **iii. Intellectual Property Rights in Software Deliverables**

- a. Where the PPA requires the development and delivery of software computer programs, the State requires only the rights necessary to accomplish the purposes of the software as set forth in the Bid Solicitation. Accordingly, unless the Bid Solicitation requires Vendors {Contractors} to provide full ownership of the software computer programs, the Vendor {Bidder} proposing commercial off the shelf software, or customized/configured commercial off the shelf software (collectively “COTS”) may license the COTS to the State on the same terms customarily provided to the public, provided that the license customarily provided to the public is:
1. included within the Quote; and
  2. sufficient to meet the State’s needs as set forth in the Bid Solicitation.
- b. A license customarily provided to the public will necessarily include terms and conditions that conflict with the Bid Solicitation. Accordingly, where a license agreement is included with the Quote pursuant to the terms of this section, the Vendor {Bidder} by including the license agreement with its Quote, expressly agrees that terms within the Vendor’s {Bidder’s} license agreement regarding indemnification, limitation of liability,

choice of law, governing law, and confidentiality which conflict with the terms of the PPA and are void and have no effect. The State expressly reserves the right to negotiate all other terms and conditions of the license agreement.

- c. Where the Bid Solicitation advises that the State seeks full ownership of the computer software program, the work shall be considered “work for hire”, i.e., the State, not the Vendor {Contractor} or Subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed for or are a result of the services required under this PPA. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this PPA, Vendor {Contractor} or Subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

**b. DATA CONFIDENTIALITY**

All financial, statistical, personnel, customer and/or technical data supplied by the State to the Vendor {Contractor} are confidential (State Confidential Information). The Vendor {Contractor} must secure all data from manipulation, sabotage, theft or breach of confidentiality. The Vendor {Contractor} is prohibited from releasing any financial, statistical, personnel, customer and/or technical data supplied by the State that is deemed confidential. Any use, sale, or offering of this data in any form by the Vendor {Contractor}, or any individual or entity in the Vendor’s {Contractor’s} charge or employ, will be considered a violation of the Blanket P.O. and/or this PPA and may result in termination of the Blanket P.O. termination and/or this PPA and the Vendor’s {Contractor’s} suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

The Vendor {Contractor} shall assume total financial liability incurred by the Vendor {Contractor} associated with any breach of confidentiality.

When requested, the Vendor {Contractor} and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. The Vendor {Contractor} may be required to view yearly security awareness and confidentiality training modules provided by the State. Where required, it shall be the Vendor’s {Contractor’s} responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one (1) month of the employees’ start date.

The State reserves the right to obtain, or require the Vendor {Contractor} to obtain, criminal history background checks from the New Jersey State Police for all Vendor {Contractor} and project staff (to protect the State of New Jersey from losses resulting from Vendor {Contractor} employee theft, fraud or dishonesty). If the State exercises this right, the results of the background check(s) must be made available to the State for consideration before the employee is assigned to work on the State’s project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on State Projects. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

**c. VENDOR’S {CONTRACTOR’S} CONFIDENTIAL INFORMATION**

- i. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- ii. By virtue of this PPA, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this PPA and/or the Blanket P.O. Vendor’s {Contractor’s} Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Vendor’s {Contractor’s} Quote as Background IP (“Vendor {Contractor} Confidential Information”). Notwithstanding the previous sentence, the terms and pricing of this PPA are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- iii. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- iv. The State agrees to hold Vendor’s {Contractor’s} Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;

- v. In the event that the State receives a request for Vendor {Contractor} Confidential Information related to this PPA pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Vendor {Contractor} with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Vendor {Contractor} shall take any action it deems appropriate to protect its documents and/or information;
- vi. In addition, in the event Vendor {Contractor} receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Vendor {Contractor} shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Vendor's {Contractor's} intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- vii. Notwithstanding the requirements of nondisclosure described in these Sections 15.b and 15.c, either party may release the other party's Confidential Information:
  - a. if directed to do so by a court or arbitrator of competent jurisdiction; or
  - b. pursuant to a lawfully issued subpoena or other lawful document request:
    - 1. in the case of the State, if the State determines the documents or information are subject to disclosure and Vendor {Contractor} does not exercise its rights as described in Section 15.c.v, or if Vendor {Contractor} is unsuccessful in defending its rights as described in Section 15.c.v; or
    - 2. (b) in the case of Vendor {Contractor}, if Vendor {Contractor} determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 15.c.vi, or if the State is unsuccessful in defending its rights as described in Section 15.c.vi.

**d. GOODWILL AND PUBLICITY.**

Neither Party shall use any 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. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this PPA, and each Party shall have the right to timely review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this PPA. Neither Party shall make any press release or public announcement of the specific terms of this PPA (except for filings or other statements or releases as may be required by applicable law, or to the degree that the same are required to be disclosed by applicable law, including any public records or similar law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this PPA, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

**16. STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS**

**16.1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE PPA**

The following terms and conditions shall apply to this PPA. The State's terms and conditions shall prevail over any conflicts set forth in a Vendor's {Contractor's} Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending this PPA, pursuant to Section 17(l) of this PPA, when the Director determines it is in the best interests of the State.

**16.2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**16.2.1. BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The Vendor {Contractor} shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the PPA.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The Vendor {Contractor} and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

### **16.2.2. ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (see paragraph 8.1 below) and Constructions Contracts (see paragraphs 8.2 and 9 below) as appropriate.

The Vendor {Contractor} or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

### **16.2.3. PREVAILING WAGE ACT**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is its guarantee that neither it nor any subcontractors it might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also its guarantee that it and any subcontractors it might employ to perform the work covered by this proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

### **16.2.4. AMERICANS WITH DISABILITIES ACT**

The Vendor {Contractor} must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

### **16.2.5. MACBRIDE PRINCIPLES**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

### **16.2.6. PAY TO PLAY PROHIBITIONS**

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A- 20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;

- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

**16.2.7. POLITICAL CONTRIBUTION DISCLOSURE**

The Vendor {Contractor} is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the Vendor {Contractor} receives one (1) or more contracts valued at \$50,000.00 or more. It is the Vendor's {Contractor's} responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

**16.2.8. STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on Vendor {Contractor} activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

**16.2.9. NOTICE TO ALL VENDORS {CONTRACTORS} SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

#### **16.2.10.COMPLIANCE - LAWS**

The Vendor {Contractor} must comply with all local, State and Federal laws, rules and regulations applicable to this PPA and to the goods delivered and/or services performed hereunder.

#### **16.2.11.COMPLIANCE - STATE LAWS**

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

During the term of this PPA, (i) Vendor {Contractor} on behalf of its officers, employees, agents, Vendors {Contractors}, and Subcontractors, warrants that all actions taken by them will be performed in accordance with all applicable federal and State law, regulations, codes and permits, and in prudent, and safe manner; (ii) Vendor {Contractor} shall obtain, at its own cost and expense, all applicable municipal and governmental approvals, licenses, permits and certificates; (iii) Vendor {Contractor} and its agents or Contractors shall comply with all applicable State and federal laws, statutes, rules and regulations including, but not limited to, N.J.A.C. 14:8-4 and N.J.A.C. 14:8-5.

#### **16.2.12.WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS**

The Vendor {Contractor} warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor {Contractor} for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the PPA without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

#### **16.3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

##### **16.3.4. COMPLIANCE - CODES**

The Vendor {Contractor} must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Vendor {Contractor} shall be responsible for securing and paying all necessary permits, where applicable.

##### **16.3.5. PUBLIC WORKS CONTRACTOR REGISTRATION ACT**

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

##### **16.3.6. PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**

N.J.S.A. 10:2-1 requires that during the performance of this contract, the Vendor {Contractor} must agree as follows:

- A. In the hiring of persons for the performance of work under this PPA or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this PPA or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the Vendor {Contractor} by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

- D. This PPA may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the PPA occurring after notice to the Vendor {Contractor} from the contracting public agency of any prior violation of this section of the PPA.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the Vendor {Contractor} must agree as follows:

- A. The Vendor {Contractor} or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Vendor {Contractor} will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor {Contractor} agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The Vendor {Contractor} or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor {Contractor}, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The Vendor {Contractor} or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Vendor's {Contractor's} commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
1. The Vendor {Contractor} or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
  2. The Vendor {Contractor} or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
  3. The Vendor {Contractor} or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
  4. In conforming with the targeted employment goals, the Vendor {Contractor} or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

#### **16.3.7. BUILDING SERVICE**

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the Vendor {Contractor} or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the PPA.

#### **16.3.8. THE WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this PPA. Therefore, all goods offered for purchase to the State must be labeled by the Vendor {Contractor} in compliance with the provisions of the statute.

#### **16.3.9. SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the PPA shall be deemed a breach of contract. If, during the term of the contract, the Vendor {Contractor} or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Vendor {Contractor} shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 16.5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

#### **16.3.10. BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this PPA to be used in a public work, they shall be manufactured or produced in the United States and the Vendor {Contractor} shall be required to so certify.

#### **16.3.11. DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

### **16.4. INDEMNIFICATION AND INSURANCE**

#### **16.4.1. INDEMNIFICATION**

The Vendor’s {Contractor’s} liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The Vendor {Contractor} shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from the Vendor’s {Contractor’s} default, negligence, gross negligence, or willful misconduct or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The Vendor’s {Contractor’s} indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 16.4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the Vendor {Contractor}, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
- D. The Vendor {Contractor} shall assume all risk of and responsibility for, and agrees to protect, defend and indemnify the State of New Jersey, its agents, and its employees, from and against, any and all claims, demands, suits, actions, recoveries, judgment and costs or expenses in connection therewith on account of the loss of life, property, injury or damage to any person, resulting from the Vendor’s {Contractor’s} performance on the Project or through the use of any improper or defective machinery, implements or appliances, or through any act or omission on the part of the Vendor {Contractor} or its agents, employees or servants, which shall arise from or result directly or indirectly from the Work and/or materials supplied under this PPA This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this PPA.
- E. In any and all claims against the State or any of its agents or employees, any employees of the Vendor {Contractor} or Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be

liable, the indemnification obligation under this section shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Vendor {Contractor} or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

**16.4.1.1. LIMITATION OF LIABILITY**

The Vendor's {Contractor's} liability to the State for actual, direct damages resulting from the Vendor's {Contractor's} performance or non-performance, or in any manner related to this PPA, for any and all claims, shall be limited in the aggregate to 300% of the total value of this PPA, except that such limitation of liability shall not apply to the following:

- a. The Vendor's {Contractor's} obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage, or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the Vendor {Contractor} under this PPA caused by negligence, gross negligence, or willful misconduct of the Vendor {Contractor};
- b. The Vendor's {Contractor's} breach of its obligations of confidentiality; and
- c. The Vendor's {Contractor's} liability with respect to copyright indemnification.
- d. The Vendor's {Contractor's} liability of decommissioning the system.

The Vendor's {Contractor's} indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 16.4.2.

For purposes of this Section, 16.4.1, and Section 16.4.2 only, the value of the total value of the contract shall be the result of the following equation:

$$\begin{array}{r} \text{Annual average kilowatt per hour price for electricity on the one year's worth of electricity bills attached to the} \\ \text{mini-bid} \\ \\ \text{The total of kilowatt hours of electricity purchased as represented on the one year's worth of electricity bills} \\ \text{attached to the mini-bid} \\ \\ \text{The term of the PPA from Section 3.} \end{array} \begin{array}{c} x \\ \\ x \end{array}$$

**16.4.2. INSURANCE**

The Vendor {Contractor} shall secure and maintain in force for the term of the PPA insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Vendor's {Contractor's} insurer cannot provide 30 days written notice, then it will become the obligation of the Vendor {Contractor} to provide the same. The Vendor {Contractor} shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Vendor {Contractor} shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at: [ccau.certificate@treas.nj.gov](mailto:ccau.certificate@treas.nj.gov)

The insurance to be provided by the Vendor {Contractor} shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The limit of liability shall be 3 times the value of the contract as determined in Section 16.4.1 or \$10,000,000, whichever is greater, per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. The Vendor {Contractor} may satisfy the requirements of this paragraph by way of an umbrella or excess liability policy;

- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
  - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
  - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
- D. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
- E. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A., B., and C. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **16.5. TERMS GOVERNING ALL CONTRACTS**

### **16.5.1. VENDOR {CONTRACTOR} IS INDEPENDENT CONTRACTOR**

The Vendor's {Contractor's} status shall be that of any independent contractor and not as an employee of the State.

### **16.5.2. CONTRACT AMOUNT**

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

### **16.5.3. PPA TERM AND EXTENSION OPTION**

If, in the opinion of the Director, it is in the best interest of the State to extend this PPA, the Vendor {Contractor} shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing PPA. The Vendor {Contractor} shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the PPA. If the Vendor {Contractor} agrees to the extension, all terms and conditions including pricing of the original PPA shall apply unless more favorable terms for the State have been negotiated.

### **16.5.4. STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task, or subtask called for under this PPA prior to the Using Agency's approval of the final Design Documents for the System pursuant to Section 7(f)(ii) of this PPA. In such an event, the Director shall provide to the Vendor {Contractor} advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the Vendor {Contractor} does not agree with the Director's proposed adjusted contract price, the Vendor {Contractor} shall submit to the Director any additional information that the Vendor {Contractor} believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Vendor {Contractor} of the final adjusted contract price; and
- B. If the Vendor {Contractor} has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Vendor {Contractor} shall be compensated for such work effort according to the applicable portions of its price schedule and the Vendor {Contractor} shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Vendor {Contractor} of the compensation to be paid for such work effort.

### **16.5.5. CHANGE IN LAW**

- A. If, after execution of this PPA, a change in applicable law or regulation affects the PPA, the parties may amend the PPA, including pricing, in order to provide equitable relief to the party disadvantaged by the change in law. The parties shall negotiate in good faith, however, if agreement is not possible after reasonable efforts, the Director shall make a prompt

decision as to an equitable adjustment, taking all relevant information into account, and shall notify Vendor {Contractor} of the final adjusted contract price.

- B. Notwithstanding anything contained in this Section to the contrary, if the Parties cannot agree to an adjusted contract price as a result of a change of law, then either Party shall have the right to terminate this PPA without further liability to either Party except (a) with respect to payment of amounts accrued prior to termination, (b) its obligations under Section 11 herein, and (c) liabilities otherwise accrued before such termination.

**16.5.6. SUSPENSION OF WORK**

The State may, for valid reason, issue a stop order directing the Vendor {Contractor} to suspend any work related to the construction, maintenance, and/or upgrade of the System that is performed under the PPA for a specific time of no greater length than is reasonably necessary. The Vendor {Contractor} shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Vendor {Contractor} shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Vendor's {Contractor's} approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The Vendor {Contractor} shall provide whatever information that Director may require related to the equitable adjustment.

**16.5.7. TERMINATION OF CONTRACT**

A. By the State

1. For Convenience: Notwithstanding any provision or language in this PPA to the contrary, the Director may terminate this PPA at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the Vendor {Contractor} and the Vendor {Contractor} shall be entitled to compensation pursuant to Exhibit 5;
2. For Cause:
  - a. If, prior to Commercial Operation Date, the Vendor {Contractor} fails to perform or comply with the PPA or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the Vendor {Contractor} with an opportunity to respond; and
  - b. If, following Commercial Operation Date, the Vendor {Contractor} fails to perform a comply with the PPA or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and such failure is not cured within twenty (20) days' notice thereof or, if the failure cannot by its nature be cured within such twenty (20) day period, the Vendor {Contractor} fails to commence and diligently pursue a cure of such failure within such twenty (20) day period, the Director may terminate this PPA; and
  - c. Where in the reasonable opinion of the Director, the Vendor {Contractor} continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Vendor {Contractor} to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the Vendor {Contractor} with an opportunity to respond.
3. In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
4. In the event of termination under this section, the Vendor {Contractor} shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

- B. By the Vendor {Contractor}: If the State/Using Agency fails to perform a material obligation hereunder, and such failure is not cured within thirty (30) days' notice thereof or, if the failure cannot by its nature be cured within such thirty (30) day period, the State/Using Agency fails to commence and diligently pursue a cure of such failure within such thirty (30) day period, the Vendor {Contractor} may terminate this PPA and the State/ Using Agency shall pay to Vendor {Contractor} a Termination Payment as set forth in Exhibit 5 for the applicable Contract Year in which such termination occurs. However, if the material obligation relates to any payment due under this PPA, termination and the State/Using Agency's right to cure are subject to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.

#### **16.5.8. SUBCONTRACTING OR ASSIGNMENT**

- A. **Subcontracting:** The Vendor {Contractor} may not subcontract other than as identified in the Vendor's {Contractor's} proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the Vendor {Contractor} of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the Vendor {Contractor} uses a subcontractor to fulfill any of its obligations, the Vendor {Contractor} shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- B. **Substitution or Addition of Subcontractors.** The Vendor {Contractor} shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional Subcontractors are authorized to begin work until the Vendor {Contractor} has received written approval from the Director. If it becomes necessary for the Vendor {Contractor} to substitute a Subcontractor, add a Subcontractor, or substitute its own staff for a Subcontractor, the Vendor {Contractor} will identify the proposed new Subcontractor or staff member(s) and the work to be performed. The Vendor {Contractor} must provide detailed justification documenting the necessity for the substitution or addition. The Vendor {Contractor} must provide detailed resumes of its proposed replacement staff or of the proposed Subcontractor's management, supervisory, and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the Subcontractor is to undertake. The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the Vendor {Contractor} in its Quote.
- C. **Assignment:** The Vendor {Contractor} may not assign its responsibilities under this PPA, in whole or in part, without the prior written consent of the Director. All requests must be received on the Vendor's {Contractor's} company letterhead and signed by an authorized representative of the Vendor {Contractor}. The letter must state the Assignor's (the original Vendor {Contractor}) name, address, phone number, FEIN/TIN number, and/or the NJSTART Vendor Identification Number. The Assignee's (the proposed new Vendor {Contractor}) name, address, phone number FEIN/TIN number and the NJSTART Vendor Identification Number. In addition, the following documents must be submitted:
1. A completed Assignment Agreement signed by the Assignor and Assignee. If incorporated, the Assignment Agreement must have the corporate seals of the assignor and the assignee. A Corporate Acknowledgement form may be substituted in place of the corporate seal. An Assignment Agreement form must be completed for each site specific mini-bid / project affected by the FEIN number change.
  2. Copy of the executed sales agreement or other document reflecting the Assignee's purchase of the Assignor's project.
  3. Information demonstrating the financial capability of the Assignee must be established by including, but not limited to the following:
    - a. Two years of certified financial statements that include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent two calendar years or the Assignee's two most recent fiscal years.
    - b. If certified financial statements are not available, either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the Assignee as of, and for, the periods presented in the statements.
  4. The Assignee must also satisfy all the procurement requirements for State contracting, i.e., submitting the required forms, certifications, licenses, etc., completed and signed as necessary. The required forms / links and certifications are listed below:
    - a. OwnershipDisclosureForm; <https://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>
    - b. Disclosure of Investigations and Actions Involving Bidder Form; <https://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestigations.pdf>
    - c. Disclosure of Investments in Iran Form; <https://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>
    - d. Proof of Affirmative Action reporting compliance; [https://www.state.nj.us/treasury/purchase/forms/AA\\_Supplement.pdf](https://www.state.nj.us/treasury/purchase/forms/AA_Supplement.pdf)
    - e. [https://www.state.nj.us/treasury/contract\\_compliance/documents/pdf/forms/aa302ins.pdf](https://www.state.nj.us/treasury/contract_compliance/documents/pdf/forms/aa302ins.pdf)
    - f. Evidence of a valid Business Registration Certificate with the Division of Revenue (copy of the Business Registration Certificate, a Division of Revenue website printout or NJSTART);
    - g. MacBride Principles Form; <https://www.state.nj.us/treasury/purchase/forms/MacBridePrinciples.pdf>

- h. Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions. NOTE: Chapter 51 Unit approval must be received prior finalizing the site specific mini-bid assignment; <https://www.state.nj.us/treasury/purchase/forms/co134/Chapter51.pdf>
  - i. Source Disclosure Form, if applicable (to be used where a contract is primarily for services); <https://www.state.nj.us/treasury/purchase/forms/SourceDisclosureCertification.pdf>
  - j. A performance bond, if applicable;
  - k. A valid Public Works Contractor Registration issued by the New Jersey Department of Labor and Workforce Development
  - l. Cooperative Purchasing Form; <https://www.state.nj.us/treasury/purchase/forms/CooperativePurchasingForm.pdf>
  - m. Insurance Certificate;
  - n.  Licenses or Certifications necessary to perform the site specific mini-bid / project, and
  - o. Relevant documents as may be required through policy changes, executive orders, etc.
5. The duration to complete an assignment task by the State depends on the quality of the submittal. If ALL documents are provided and completed properly, the administrative process by the State should not take more than 30 days to complete.

**16.5.9. NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE**

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

**16.5.10. MERGERS, ACOUISITIONS**

If, during the term of this contract, the Vendor {Contractor} shall merge with or be acquired by another firm, the Vendor {Contractor} shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Vendor {Contractor} shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Vendor {Contractor} and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the PPA for cause.

If, at any time during the term of the contract, the Vendor's {Contractor's} partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

**16.5.11. PERFORMANCE GUARANTEE OF VENDOR {CONTRACTOR}**

The Vendor {Contractor} hereby shall provide certifications that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the PPA from time of written acceptance by the State. The Vendor {Contractor} shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the Vendor {Contractor} shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the PPA. The PPA shall not be considered complete until final approval by the State's using agency is rendered.

**16.5.12. DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The Vendor {Contractor} shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this PPA and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Vendor {Contractor}.

**16.5.13. APPLICABLE LAW AND JURISDICTION**

This PPA and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

**16.5.14. CONTRACT AMENDMENT**

Except as provided herein, the PPA may only be amended by written agreement of the State and the Vendor {Contractor}.

**16.5.15. MAINTENANCE OF RECORDS**

The Vendor {Contractor} shall maintain records for products and/or services delivered against the PPA for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

**16.5.16. ASSIGNMENT OF ANTITRUST CLAIM(S)**

The Vendor {Contractor} recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the Vendor {Contractor}, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this PPA. In connection with this assignment, the following are the express obligations of the Vendor {Contractor}:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
  - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Vendor {Contractor} has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Vendor {Contractor}, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

**16.6. TERMS RELATING TO PRICE AND PAYMENT**

**16.6.1. PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of the PPA or purchase order and shall not be subject to increase during the period of the PPA.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of the PPA for cause, pursuant to provision 5.7(b)1.

### **16.6.2. TAX CHARGES**

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

In addition to the New Jersey Sales and Use Tax requirements set forth in Paragraph 16.2.1, "Business Registration," above, Vendor {Contractor} shall pay all real property taxes, personal property taxes and assessments related to and imposed on the Facility and System by the applicable taxing authority.

### **16.6.3. PAYMENT TO VENDORS**

- A. The using agency(ies) is (are) authorized to order and the Vendor {Contractor} is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the PPA have been ordered and delivered, such delivery shall be a violation of the terms of the PPA and may be considered by the Director as a basis to terminate the PPA and/or not award the Vendor {Contractor} a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the Vendor {Contractor} shall reimburse the State the full purchase price;
- B. The Vendor {Contractor} must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the Vendor's {Contractor's} bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by the Vendor {Contractor} and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls); and
- D. The Vendor {Contractor} shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

### **16.6.4 [RESERVED]**

### **16.6.5. NEW JERSEY PROMPT PAYMENT ACT**

The New Jersey Prompt Payment Act, [N.J.S.A. 52:32-32 et seq.](#), requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by State agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

### **16.6.6. AVAILABILITY OF FUNDS**

The State's obligation to make payment under this PPA is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

### **16.7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section 16.7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### **16.7.1. PROCUREMENT OF RECOVERED MATERIALS**

To the extent that the scope of work or specifications in the PPA requires the Vendor {Contractor} to provide any of the following items, this Section 16.7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the Vendor {Contractor} must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
  - 1. Paper and paper products listed in 40 C.F.R. 247.10;
  - 2. Certain vehicular products as listed in 40 CFR 247.11;
  - 3. Certain construction products listed in 40 C.F.R. 247.12;
  - 4. Certain transportation products listed in 40 C.F.R. 247.13;
  - 5. Certain park and recreation products, 40 C.F.R. 247.14;
  - 6. Certain landscaping products listed in 40 C.F.R. 247.15;
  - 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
  - 8. Other miscellaneous products listed in 40 C.F.R. 247.17.
  
- B. As defined in 40 CFR 247.3, "recovered material" means:
  - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
  - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
    - a. Postconsumer materials such as --
      - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
      - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
    - b. Manufacturing, forest residues, and other wastes such as --
      - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
      - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
      - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
      - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
      - v. Fibers recovered from waste water which otherwise would enter the waste stream.
  
- C. For contracts in an amount greater than \$100,000, at the beginning of each contract year, the Vendor {Contractor} shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 16.7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, the Vendor {Contractor} shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

### **16.7.2. EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the Vendor {Contractor} agrees as follows:

- A. The Vendor {Contractor} will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor {Contractor} will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor {Contractor} agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Vendor {Contractor} will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor {Contractor}, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Vendor {Contractor} will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's {Contractor's} legal duty to furnish information.
- D. The Vendor {Contractor} will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's {Contractor's} commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Vendor {Contractor} will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Vendor {Contractor} will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Vendor's {Contractor's} noncompliance with the nondiscrimination clauses of this PPA or with any of the said rules, regulations, or orders, this PPA may be canceled, terminated, or suspended in whole or in part and the Vendor {Contractor} may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Vendor {Contractor} will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor {Contractor} will take such action with respect to any

subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor {Contractor} may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the PPA.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **16.7.3. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

#### **16.7.4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **16.7.5. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**16.7.6. CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**16.7.7. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**16.7.8. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**16.8. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**16.8.1. GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS**

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval; Certificate of Employee

Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

## **16.8.2. CONSTRUCTION CONTRACTS**

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

### CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the

contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this PPA and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this PPA to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

## **16.9. EXECUTIVE ORDER NO. 151 REQUIREMENTS.**

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8.

## **17. GENERAL**

- a. **Preamble.** The Preamble to this PPA is incorporated as part of this PPA as if fully set forth at length herein, and shall constitute part of the consideration for this PPA.
- b. **Priority of Contract Documents.** This PPA is intended to be read in conjunction with the following documents which constitute the Contract Documents. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: (1) this PPA and any amendments thereto; (2) the Blanket P.O.
- c. **Governing Law.** This PPA and any litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations, and rules of evidence of the State of New Jersey without reference to its conflict of laws principles. Any litigation arising out of or in connection with this PPA shall take place in a court of competent jurisdiction in New Jersey and shall be subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.
- d. **Binding Effect.** This PPA shall be binding upon and inure to the benefit of the Parties and all of their heirs, legal representatives, attorneys, shareholders, former shareholders, officers, directors, principals, employees, agents, divisions, parent companies, subsidiaries or affiliated corporations, predecessors, successors, insurers, and assigns.

- e. **No Third-Party Beneficiaries.** This PPA does not create in any individual or entity the status of third-party beneficiary, and this PPA shall not be construed to create such status.
- f. **Unenforceability and Severability.** Should any provision of this PPA be found unenforceable or invalid by a court of competent jurisdiction, that provision will be severed and the remainder of this PPA will continue in full force and effect.
- g. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this PPA and which do not involve the assumptions of obligations other than those provided for in this PPA, to give full effect to this PPA and to carry out the intent of this PPA.
- h. **No Waiver.** The failure of either party to seek redress for violation of, or insist upon the strict performance of any covenant or condition of this PPA shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of the original violation. The payment of any amounts by the Using Agency with knowledge of a breach of any of the covenants of this PPA shall not be deemed a waiver of such a breach and no provisions of this PPA shall be deemed to be waived by the Using Agency unless such waiver is in writing and signed by the Using Agency.
- i. **Notices.** All notices under this PPA shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this PPA at the addresses set forth in this PPA or such other address as either party may specify in writing.
- j. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this PPA is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this PPA and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- k. **Forward Contract.** The transaction contemplated under this PPA constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. **Amendments.** Any amendment to this PPA shall be set forth in writing and signed by an authorized representative of each Party in order to become effective.
- m. **Counterparts, Captions.** This PPA may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same PPA. The captions or headings in this PPA are strictly for convenience and shall not be considered in interpreting this PPA.
- n. **Survival.** Provisions of this PPA that should reasonably be considered to survive termination of this PPA shall survive.
- o. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.
- p. **BONDING.**
  - i. Performance bond liability. Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this PPA, the balance of any warranty or guarantee beyond one-year term of the applicable performance bond shall continue to be guaranteed solely by Vendor under the terms of this PPA. The performance bond does not guarantee any property restorative requirements.

- ii. Payment bond liability. Any payment bond issued will cease at the termination of any time required by law.
- iii. Performance Guarantee. Neither payment bonds, whether for labor or materials, nor performance bonds, are applicable to any specified performance guarantee.
- q. **No Utility.** The Parties agree not to take any action that would cause either Party to become an electric utility or public utility company under applicable law and not to assert that either Party is an electric utility or public utility company. In addition, the Using Agency agrees not to resell, assign, or otherwise transfer the delivered energy to any third party without the approval of Vendor {Contractor} except approval shall not be required for any tenant or user of any portion of the facility.
- r. **Authority.** The individuals executing this PPA on behalf of their respective principals represent that they have the authority to so bind their respective principals.

**Exhibit 5**

Termination Payment

Contract Year	Termination Payment Amount (\$/Watt)
1	X.XX
2	X.XX
3	X.XX
4	X.XX
5	X.XX
6	X.XX
7	X.XX
8	X.XX
9	X.XX
10	X.XX
11	X.XX
12	X.XX
13	X.XX
14	X.XX
15	X.XX
16	X.XX
17	X.XX
18	X.XX
19	X.XX
20	X.XX
After Year 20	Fair Market Value

**Exhibit 6**

Bid Proposal Form

**End of Attachment**