

ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT

This Engineering, Procurement and Construction Services Agreement (“EPC Contract”) is by and between Blue Sky Utility 2017 II, LLC, a California limited liability company (herein designated as “Owner”) and Bright Power, Inc., DBA “BPi” a California corporation (herein designated as “EPC Contractor”), is made and entered into as of May 23, 2017.

SECTION 1. GENERAL PROVISIONS AND DEFINITIONS

1.1 The “EPC Contract Documents” consist of this EPC Contract, Exhibits, all Schedules, authorized Change Orders, all Design/Build Specifications, whether in existence at the time this EPC Contract is entered into or whether developed pursuant to the terms of this EPC Contract after the execution thereof and amendments relating thereto. All of the foregoing EPC Contract Documents are incorporated by reference and made part of this EPC Contract, all of which are deemed appended to the other (collectively, herein called, the “EPC Contract”).

1.2 This “EPC Contract,” taken as a whole, sets forth the full and complete understanding of the parties as of the date stated above, and supersedes any and all previous agreements and representations. This EPC Contract is not intended to constitute a stand-alone agreement, and may not be construed independently of the other parts of the “Contract.”

1.3 The Owner wishes to procure the services of one legal entity, designated as the “EPC Contractor,” consistent with Exhibit A – Scope of Work and those services described in this EPC Contract.

1.4 In addition, the Owner, in cooperation with the EPC Contractor, wishes to include in this contract the procurement of certain material and equipment by the EPC Contractor, on behalf of the Owner, for the Project.

1.5 The EPC Contractor agrees to provide the services requested by the Owner and provide such services with its own qualified employees including consultants and shall procure the services of qualified architectural and engineering services as necessary or required for the performance of the Work as set forth herein. If necessary, the EPC Contractor will enter into an agreement with a Professional Engineer, who is licensed and registered in the State of California to perform services under contractual terms that, where apt, follow or otherwise incorporate the applicable provisions set forth herein. Nothing in this EPC Contract shall be construed or interpreted to be the practice of architecture or engineering by EPC Contractor.

1.6 Definitions. When used in this EPC Contract, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Section 2 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meaning.

“Application for Progress Payment” shall have the meaning set forth in Exhibit B.

“Authorized Representatives” shall have the meaning set forth in Section 4.6.

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

“Casualty Report” shall have the meaning set forth in Section 10.3.

“Change Order” shall have the meaning set forth in Section 9.3.

“Construction Notice to Proceed” shall mean the notice from Owner that EPC Contractor can commence the Work.

“Contract Price” shall have the meaning set forth in Section 8.1.

“Design/Build Specifications” shall mean the design/build specifications for the Project prepared by EPC Contractor in accordance with the terms of this EPC Contract, as further defined in Exhibit A attached hereto, as such may be amended or supplemented from time to time pursuant to the terms of this EPC Contract.

“Environmental Laws” shall mean all applicable Federal, state, and local laws including statutes, regulations, ordinances, codes, rules, and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., the Federal Water Pollution, as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., now or at any time hereafter in effect.

“EPC Contract” shall have the meaning set forth in Section 1.

“EPC Contractor” shall have the meaning set forth in Section 1 and is more specifically identified as Bright Power, Inc., DBA “BPi”, a California corporation.

“EPC Contractor Indemnified Parties” shall have the meaning set forth in Section 13.4.

“Event of Default” shall have the meaning set forth in Section 12.1.

“Final Acceptance” shall mean final acceptance of the Project as defined in Section 6.6.

“Final Acceptance Date” shall mean the date of Final Acceptance as defined in Section 6.6.

“Final Retainage” shall have the meaning set forth in Exhibit B hereto.

“Force Majeure” shall mean a cause or event beyond the reasonable control of a Party that is not attributable to its own fault or negligence. A Force Majeure Event includes lightning, extreme temperatures, acts of God; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes or extreme weather conditions; strikes; lock-outs or other industrial disturbances or slowdowns; acts of public enemies; a refusal of a necessary government license or permit; unforeseen utility upgrades or requirements needed on the utility side; acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity (and beyond the reasonable ability of a party to foresee or to contest or prevent such acts, failures to act or orders), provided, however, that any such discretionary acts or failures to act by a party may not be asserted as an event of *Force Majeure* by such party; insurrections; military action; war, whether or not it is declared; sabotage; terrorist acts; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party (and its subcontractors and suppliers) claiming *Force Majeure* (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this EPC Contract. A party’s right to suspend its performance under this EPC Contract for a Force Majeure shall

be limited to the duration of such event of Force Majeure and the party claiming an event of Force Majeure shall resume performance of its obligations under this EPC Contract as soon as such event of Force Majeure has ceased.

“Guaranteed Maximum Price” shall have the meaning set forth in Section 8.3.

“Host Site” shall mean the Premises where the Project is to be constructed, as more specifically set forth in Exhibit E.

“Interconnecting Utility” shall mean Southern California Edison.

“Liquidated Damages” shall have the meaning set forth in Section 7.1.

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

“Major Subcontract” shall have the meaning set forth in Section 3.18.

“Major Subcontractor” shall have the meaning set forth in Section 3.18.

“Mechanical Completion” shall mean: (a) all equipment and systems have been properly and fully installed, connected and tested in accordance with Prudent Solar Industry Practice and the requirements of the EPC Contract; and (b) no Work remains to be completed that adversely affects the ability of Owner to safely and fully use and operate the Project for its intended purpose.

“Owner” shall have the meaning set forth in Section 1 and is more specifically identified as Blue Sky Utility 2017 II, LLC, a California limited liability company.

“Owner Indemnified Parties” shall have the meaning set forth in Section 13.1.

“Owner’s Engineer” shall mean one or more engineering firms or engineers, if any, designated by the Owner from time to time to conduct inspections of construction or equipment and/or observation or review of Test Procedures and results as set forth herein.

“Owner’s Project Budget” shall have the meaning set forth in Section 8.1.

“Permitted Change” shall have the meaning set forth in Section 9.2.

“Point of Delivery” shall mean the point where the electrical lines from the solar generating equipment tie into the electrical lines and/or equipment provided by the Interconnecting Utility.

“Progress Payment” shall have the meaning set forth in Exhibit B.

“Projected Progress Payment Schedule” shall mean the projected progress payment schedule set forth in Exhibit B.

“Prudent Solar Industry Practice” means, in connection with the design, procurement of equipment and services, installation and construction of solar power generation systems of a type and size and having geographical and climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members, in the United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the

industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with applicable laws, reliability, safety and expedition. Prudent Solar Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Project” shall mean the solar photovoltaic, electricity generating facility having a total initial nominal nameplate capacity of 1.58746 MWDC, including modules, mounting system, inverters, transformers, switchgear and monitoring system to be designed and constructed by EPC Contractor for Owner pursuant to this EPC Contract on the Host Site in conformance with the specifications and requirements more particularly set forth herein.

“Proprietary Documents” shall have the meaning set forth in Section 3.7.

“Required Change Order” shall have the meaning set forth in Section 9.4.

“Scheduled Completion Date” shall mean, subject to extension as provided herein, November 20, 2017, provided that EPC Contractor has received the Construction Notice to Proceed no later than April 12, 2017.

“Substantial Completion” shall have the meaning set forth in Section 6.5.

“Substantial Completion Date” shall mean the date of Substantial Completion as defined in Section 6.5.

“Supplier Guarantees” shall mean the guarantees of performance from each supplier of equipment to the Project, including, without limitation the guarantees of the supplier(s) of solar panel modules, inverters, racking systems, transformers, switchgear and monitoring equipment for the Project.

“Solar System” shall mean the solar photovoltaic, electricity generating facility having a total initial nominal nameplate capacity of 1.58746 MWDC.

“System Operation and Maintenance Manual” shall have the meaning set forth in Section 3.6(d).

“Termination Costs” shall have the meaning set forth in Section 12.2.

“Test Completion Date” shall have the meaning set forth in Section 6.2.

“Test Procedures” shall have the meaning set forth in Section 3.20.

“Utilities” shall mean heat, electricity, water, telephone, fax, and cell phone services, and the disposal of wastewater and solid waste and fuels used in, or resulting from, the Work.

“Work” shall mean the work to be performed by the EPC Contractor as set forth in this EPC Contract and more specifically defined as Scope of Work in Exhibit A attached hereto and incorporated herein.

SECTION 2. COLLABORATIVE PRINCIPLES

- 2.1 Collaborative Project Delivery.** The EPC Contractor shall cooperate with the Owner in the development of the Design/Build Specifications for the Project and shall collaborate with all Major Subcontractors, the Major Equipment Vendors and the Owner in connection therewith and in connection with the completion of the Work. It is the intention of the EPC Contractor and Owner to require all of the EPC Contractor's subcontractors and suppliers to share information and collaborate for the benefit of the Project. Nothing in this Section shall relieve or otherwise limit the EPC Contractor of its obligation to deliver the Project, turnkey, to the Owner.
- 2.2 EPC Contractor Collaboration Responsibilities.** The EPC Contractor shall cooperate with the Owner to identify the Owner's objectives, including specific budget and schedule criteria not otherwise specified in this EPC Contract and to identify for potential inclusion in the Design/Build Specifications special equipment, systems and site requirements that in the opinion of the EPC Contractor or its subcontractors would be beneficial for inclusion in the Design/Build Specifications and incorporation into the Work. The Owner shall information reasonably requested by the EPC Contractor in a timely manner.
- 2.3 Additional EPC Contractor's Collaboration Responsibilities.** The EPC Contractor shall furnish or provide all the design and engineering services necessary to design the Project in accordance with the Owner's objectives and other relevant information defining the Project. Consistent with the collaborative approach set forth in this Agreement, the EPC Contractor shall draw upon the assistance of the Major Subcontractors, Major Equipment Vendors and others in developing the Project design, but the EPC Contractor shall retain overall responsibility for completing or causing the completion of the Design/Build Specifications as required by applicable law. Cost and schedule are design criteria and the EPC Contractor, in collaboration with the Owner and all Major Subcontractors and Major Equipment Vendors shall attempt to ensure that the Design/Build Specifications is completed in such a way as to reduce the final cost of the Project and to meet scheduling requirements of this EPC Contract. The EPC Contractor shall furnish preconstruction and construction administration and management services, collaborate with the Owner and all Major Subcontractors and Major Equipment Vendors and promote the delivery of the Project in an expeditious manner.
- 2.4 Value Identification and Creation.** Throughout the development of Design/Build Specifications, the EPC Contractor and its subcontractors and suppliers shall continually seek to create value by identifying options to improve constructability and functionality, reduce capital or life cycle cost, or provide operational flexibility consistent with the Owner's needs. As part of those efforts, the EPC Contractor and its subcontractors and suppliers shall identify and evaluate alternative systems, means, methods, configurations, finishes, equipment and approaches that will create a savings of time or money in constructing or operating and maintaining the Project, or increase quality, constructability, or other measures of value. As a result of these efforts, a Major Subcontractor and/or a Major Equipment Vendor may submit a proposal to the EPC Contractor and Owner that details the proposed change, identify all aspects of the Project directly or indirectly affected by the change, specify the cost or time savings to be achieved if the proposal is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. The Owner shall determine whether to pursue such a proposal. If Owner adopts such a proposal is adopted, the EPC Contractor shall ascertain design feasibility, consistency with the Owner's programmatic needs, compatibility and compliance with building regulations, and professional standards of care and incorporate the proposed value creation into the Design/Build Specifications and the Work.
- 2.5 Constructability.** Throughout the development of the Project design, the EPC Contractor shall

conduct constructability reviews with its design consultants, if any, and its Major Subcontractors and Major Equipment Vendors, to determine that the Design/Build Specifications will result in construction drawings that are sufficiently complete, accurate and coordinated so as to reduce the risk of disruption, delay, change orders and potential claims. Notwithstanding the foregoing, consistent with the collaborative approach set forth in this Agreement, the EPC Contractor shall advise the Owner if the EPC Contractor is actually aware that the design does not comply with codes, laws or requirements of government or public authorities having jurisdiction over the Project. Nothing in this section shall relieve any Party from their respective obligations to perform in accordance with the terms of their respective contract and the applicable standard of care.

SECTION 3: THE WORK AND RELATED MATTERS

3.1 Scope of Work. Performance by the EPC Contractor of the Work under this EPC Contract is more fully described on Exhibit A attached hereto.

(a) In performing the Work in accordance with the terms of this EPC Contract, the EPC Contractor will purchase all materials and equipment outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new and become the property of the Owner pursuant to the terms of Section 3.11. The acquisition, construction and assembly (including the procurement, inspection, transport, installation, construction, assembly and erection of all required structures, materials, machinery, equipment and supplies) of the Project in accordance with the Design/Build Specifications and in (i) a good and workmanlike manner, (ii) accordance with Prudent Solar Industry Practice, and (iii) conformance with all applicable laws, regulations, ordinances and orders, including Environmental Laws.

(b) EPC Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the performance of the Work.

(c) EPC Contractor agrees to coordinate such aspects of its performance of the Work with and provide such information and documentation to the local Interconnecting Utility as may reasonably require such coordination, as Interconnecting Utility or the Owner may reasonably request.

3.2 Approvals; Licenses; Permits.

(a) Except for the permits set forth in Exhibit F which are designated as Owner's responsibility to obtain, the EPC Contractor shall determine and obtain in a timely fashion and shall comply with, at its own expense, all approvals, royalty fees, licenses and license fees, inspections, and permits required by federal, state and local governmental agencies or otherwise necessary for the (i) proper and timely execution and completion of the Work, (ii) acquisition, installation, construction, commissioning and testing of the Project, and (iii) initial use, occupancy and operation of the Project. This excludes use permits and Americans with Disabilities Act requirements for Building permit only. EPC Contractor shall comply with all approvals, permits and licenses applicable to the Work, regardless of whether obtained by EPC Contractor or by, or on behalf of, Owner, provided Owner has delivered or otherwise made available copies of such approvals, permits or licenses to EPC Contractor. EPC Contractor and Owner each agree to use reasonable efforts to assist each other in obtaining such approvals, licenses and permits to the extent such assistance is reasonably necessary. Owner consents to the use of Owner's name in any lawful and accurate application for such approvals, licenses or permits where the same is required, provided Owner is given prior written notification thereof.

(b) EPC Contractor shall, and shall cause its subcontractors to, comply with and give notices required by law, ordinances, rules, regulations and building codes. If EPC Contractor performs any Work

knowing it or reasonably should have known it to be contrary to laws, ordinances, rules, regulations, and/or building codes, it shall correct and repair such Work at its own expense.

(c) EPC Contractor shall deliver to Owner evidence of (and if requested copies of) all material, permits, approvals and licenses obtained by or registrations or filings made by the EPC Contractor or its subcontractors and any amendments thereto.

3.3 Supervision; Inspection. The Work is to be performed under the general and specific direction, supervision and responsibility of the EPC Contractor, using the EPC Contractor's good skill and attention and in (i) a good and workmanlike manner, (ii) accordance with Prudent Solar Industry Practice, (iii) and in conformance with all applicable laws, regulations, ordinances and orders, including Environmental Laws. The EPC Contractor shall give sufficient supervision to the Work, using a competent superintendent and/or project manager who shall be available at all times during working hours when material construction is being carried on, except as noted in Exhibit A. The EPC Contractor shall also employ, in connection with the Work, capable, experienced and reliable supervisors and such skilled workers as may be required for the various classes of work to be performed. The EPC Contractor shall be solely responsible for the means and methods of construction and for the supervision of the EPC Contractor's employees and subcontractors. The EPC Contractor shall at all times take all reasonable precautions for the safety of persons performing the Work and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner. The EPC Contractor shall not employ or contract with persons who are unfit or unskilled in tasks assigned to them. The Work may be inspected at any time by the Owner's Engineer or Owner, but such right of inspection shall not relieve EPC Contractor of any of its responsibilities hereunder, except to the extent otherwise specifically provided herein. The EPC Contractor shall be solely responsible for all construction, methods, techniques and sequencing.

3.4 Owner's Engineer. The Owner and Owner's Engineer shall have the rights of inspection, review and approval of the Work specified herein. The Owner and Owner's Engineer may, upon completion of construction of component parts of the Project, make a complete inspection and observe, utilizing the EPC Contractor's personnel and/or manufacturers' representatives, such component and system tests as shall be necessary to assure conformance with the Design/Build Specifications, the standards required by this EPC Contract, any equipment and materials contracts, and the guarantees given in connection therewith. In the event that the Owner or the Owner's Engineer determines that the construction contains or may contain one or more defects, it shall be the duty of the EPC Contractor and/or the EPC Contractor's sureties (if required), to have an inspection made by an independent engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects. No exercise (or failure to exercise) by the Owner or Owner's Engineer of any of its rights or obligations with respect to the Work shall relieve the EPC Contractor from full compliance with the requirements of this EPC Contract.

3.5 Progress Reports. Concurrent with the submission of each Application for Progress Payment as set forth in Exhibit B hereof, EPC Contractor shall deliver to Owner, the designated Owner's Engineer (if any), and any party designated by Owner written progress and construction completion reports illustrating in reasonable detail the EPC Contractor's progress in performing the Work.

3.6 Delivery of Documents. Promptly after such time as they first become available and in any event prior to the Substantial Completion Date, EPC Contractor shall provide to Owner the originals and two (2) additional copies, and one (1) copy of each to the Owner or the designated Owner's Engineer of the following (each to be in form and substance reasonably satisfactory to Owner, and acceptable to the Owner or Owner's Engineer):

- (a) Final Design/Build Specifications for the Project as modified by Change Orders or other changes approved pursuant to Section 9;
- (b) Final As-built Drawings for the Project;
- (c) All installation drawings, field specifications and test reports on material and equipment for the Project;
- (d) The System Operation and Maintenance Manual (the “System Operation and Maintenance Manual”) for the Project, provided to the EPC Contractor by the Major Equipment Vendors for the Project, describing the following:
 - (i) Complete operating procedures necessary or appropriate to start the operation of the Project upon completion of assembly, to operate the Project over the complete range of its operating capabilities or potential capabilities and to discontinue the operations of the Project for any period of time, including, without limitation, safety precautions and limitations, optimum operating conditions, manufacturers’ standards and warranty conditions and all other information necessary or appropriate to instruct Owner in all phases of operation of the Project; and
 - (ii) Complete maintenance procedures, instructions, schedules, diagrams and aids, including manufacturers’ standards and warranty conditions, necessary, appropriate or helpful in assembling, disassembling into integral systems customary for on-site or off-site maintenance, and maintaining the Project in reasonable operating condition.

The operation and maintenance procedures shall be in accordance with Prudent Solar Industry Practice and in substantial conformity with all manufacturers’ recommendations and requirements for the individual subsystems and components. The EPC Contractor shall deliver to Owner thirty (30) days prior to the Substantial Completion Date, draft copies of the System Operation and Maintenance Manual. Prior to the Final Acceptance Date, EPC Contractor shall deliver to Owner and the Owner’s Engineer and shall cause to be placed at the Project the System Operation and Maintenance Manuals containing safety and emergency procedures, and shall update all of the documents listed above to reflect any changes resulting from the completion of the Work.

3.7 Ownership of Documents. All final schedules, plans, drawings, models, and other documents furnished to the Owner or developed in the course of this Project (the “Proprietary Documents”) shall be the exclusive property of Owner when completed and when Owner pays the EPC Contractor for its services hereunder. Owner shall not acquire any of EPC Contractor’s copyright or trade secret rights. Owner is granted a non-exclusive use of the Proprietary Documents as required to own, use, occupy, repair, maintain, and operate the Project, and may make and/or retain copies of the Proprietary Documents for such purposes. Such plans are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project.

3.8 Warranty as to Documents. The submission by the EPC Contractor to Owner of any schedule, plan, manual, drawing, specification, record or other document included in this EPC Contract or any schedule hereto or otherwise prepared by the EPC Contractor on or after the date hereof in the course of its performance of the Work under this EPC Contract shall constitute a warranty by the EPC Contractor, to the best of its knowledge, that the information set forth therein is complete and accurate in all material respects as of the date of the submission and that with respect to documents procured by the EPC Contractor from third parties, to the best of its knowledge, the information set forth therein is accurate in all material respects. Review by Owner of any document submitted by the EPC Contractor does not constitute acceptance or approval thereof, and shall not relieve the EPC Contractor from full compliance

with the requirements of this EPC Contract.

3.9 Performance Standards. All maps, drawings, plans, specifications, and other documents required to be prepared or submitted by the EPC Contractor under this EPC Contract shall conform to applicable environmental requirements related to the Project. The EPC Contractor's performance of the Work, in addition to being in conformance with Prudent Solar Industry Practice and all other standards set forth in this EPC Contract, shall be in accordance with good professional standards and industry codes in effect at the date of this EPC Contract. The EPC Contractor warrants to Owner that all materials and equipment furnished under this EPC Contract shall be new and unused, good quality utility goods, suitable for the intended purpose and shall meet the requirements of all applicable codes and standards. The EPC Contractor shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The EPC Contractor shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.

3.10 Employees. The EPC Contractor shall at all times enforce good order among its employees and those of its subcontractors, and shall not employ or permit any subcontractor to employ in connection with its performance under this EPC Contract any unfit person or anyone not skilled in the work assigned to such person. The EPC Contractor shall use reasonable efforts in the employment of labor (whether directly or indirectly employed) so as not to cause any conflict or interference with or between the various trades, or delay in performance of EPC Contractor's obligations.

3.11 Title. The EPC Contractor warrants that good title to all specifications, schedules, plans, drawings, test reports and other documents produced by or for it under this EPC Contract, and all Work, materials, supplies and equipment covered by this EPC Contract, will pass to Owner either upon incorporation into the Project or upon receipt of payment by the EPC Contractor for such item of Work, material or equipment pursuant to Section 8 or upon passage of title to the EPC Contractor from vendor or subcontractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. EPC Contractor warrants that no materials, supplies or equipment covered by this EPC Contract will have been acquired by the EPC Contractor, or by any other person performing any Work or furnishing any materials or equipment covered by this EPC Contract, subject to an agreement under which an interest therein or any encumbrance thereon is retained by the seller or otherwise imposed by the EPC Contractor or such other person, provided, however, that any proprietary designs or equipment may be procured solely for use in this Project. The EPC Contractor shall warrant and defend such title, at EPC Contractor's expense, against the claims of third parties. The EPC Contractor shall execute and deliver to the Owner any instrument reasonably requested by the Owner to effect or evidence the transfer of all of EPC Contractor's right, title and interest in the system and its component parts.

3.12 Labor and Materials Required for Performance of Work. Except as otherwise expressly provided herein, the EPC Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, Utilities, transportation and other Project and services necessary for the proper execution of its obligations under this EPC Contract, whether temporary or permanent and whether or not incorporated into the Project.

3.13 Taxes and Fees. Except as provided in Section 3.2, Owner shall pay (i) all personal property and other like taxes (other than taxes calculated on the basis of the EPC Contractor's gross income and any of the EPC Contractor's receipts) arising from the ownership of the Project, (ii) real estate taxes payable with respect to the Project Site assessed upon Owner in connection with the Project that are not the responsibility of the owner of the Host Site, (iii) all governmental fees, assessments, charges or levies imposed upon Owner and the EPC Contractor (and not required to be paid by the EPC Contractor hereunder as required pursuant to Section 3.2 and elsewhere) in connection with the Project and the Project Site, and (iv) all fees required by applicable law to be paid by Owner to obtain permits and licenses which Owner is required to obtain hereunder. The EPC Contractor or its subcontractors shall pay

(i) all royalties and license fees necessary for the proper execution and completion of its obligations under this EPC Contract, (ii) all workmen's compensation, unemployment insurance, social security tax or other employment tax related to the EPC Contractor's or subcontractors' employees, and (iii) all fees required by applicable law to be paid by the EPC Contractor to obtain the permits and licenses it is required to obtain hereunder pursuant to Section 3.2, Exhibit A, and elsewhere. All taxes and fees owed by the EPC Contractor or any subcontractor shall be paid when due. The prices in this EPC Contract include provisions for the payment of all monies which will be payable by the EPC Contractor or the Owner in connection with the construction of the project on account of taxes or fees imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the project, including, without limitation, customs fees. The EPC Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to its Work. Upon the failure of the EPC Contractor promptly to pay any tax or fee for which it is liable pursuant to this Section 3.13 and any other section of this EPC Contract, Owner may pay such tax or fee and immediately recover the expenses incurred by it in connection with such payment from the EPC Contractor or set off such expenses against any sums owed by Owner to the EPC Contractor, together with any attorneys' fees, costs, expenses and interest.

3.14 Safety. The EPC Contractor shall perform and shall cause the subcontractors to perform the Work at all times in a manner to avoid the risk of bodily harm to persons or risk of damage to any property, and to other property at the Host Site or adjacent thereto. The EPC Contractor shall implement and oversee its safety program and shall comply with all health and safety laws, rules and regulations applicable to it. The EPC Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions. EPC Contractor shall develop and shall provide to Owner within 15 days of the date this EPC Contract is executed by the parties hereto an environmental and health and safety program document describing EPC Contractor's applicable safety measures and shall comply with and shall cause its subcontractors to comply with such measures in the performance of the Work.

3.15 No Liens. Provided that Owner shall not be in default due to non-payment, the EPC Contractor shall within ten (10) days of notice pay, dissolve or bond off any lien or encumbrance on the Project, the Host Site, any other Project or equipment located on the Host Site or any component thereof or interest therein by any subcontractor, vendor, or other party claiming by or through EPC Contractor for labor, materials, supplies or other charges which, if unpaid, might be or become a lien upon the Project, the Host Site, or any component thereof. The EPC Contractor shall immediately notify Owner of the assertion of any lien or encumbrance asserted upon the Project, the Host Site, or any component thereof or any interest therein. Upon the failure of the EPC Contractor promptly to pay, dissolve or bond off any lien or encumbrance as required hereby, Owner may pay or bond off such lien or encumbrance and immediately recover the expenses incurred by it in connection with such payment or discharge from the EPC Contractor or set off such expenses against any sums owed by Owner to the EPC Contractor.

3.16 Timely Performance. Time is of the essence in this EPC Contract. If the EPC Contractor shall fail to satisfy the conditions precedent for Substantial Completion set forth in Section 6.5 on or before the Scheduled Completion Date (as such may be extended from time to time pursuant to the terms of this EPC Contract) for any reason other than delay caused by (a) Owner's material breach of its obligations hereunder, or (b) any *Force Majeure* event, the EPC Contractor shall be obligated to pay Liquidated Damages pursuant to Section 7, as well as provide such other relief as may be due at law or in equity.

3.17 Extension of Scheduled Completion Date. The EPC Contractor shall be entitled to suspend its performance of the Work after immediate written notice to Owner upon the occurrence and during the continuance of any *Force Majeure* event which causes suspension of the Work (without imposition of Liquidated Damages), but shall be required promptly to resume its performance of the Work upon the cessation of such event. If a *Force Majeure* event causes suspension of the Work, the Scheduled

Completion Date shall be equitably adjusted by Owner and the EPC Contractor taking into account (among other factors) the length of any suspension or delay of the Work caused by such *Force Majeure* event and the stage of the Work during which such event occurred.

3.18 Subcontractors. The EPC Contractor may subcontract all or any portion of the Work, provided that the EPC Contractor shall remain liable to Owner for any of the Work so subcontracted.

- (a) EPC Contractor shall identify and Owner shall approve the engagement of subcontractors for the following components of the Work: (1) civil engineering at the Host Site; (2) equipment transportation from the delivery points for any equipment for the project, including rail, trucking and barge companies; (3) equipment erection and related crane work; (4) foundation construction (if any); and (5) electrical work at the Host Site. Each subcontractor ultimately approved by the Owner and engaged by the EPC Contractor is hereinafter referred to as a “Major Subcontractor” and the agreement entered into between the EPC Contractor and a Major Subcontractor shall be referred to as a “Major Subcontract.”
- (b) The EPC Contractor shall require that all Major Subcontract proposals include the following:
 - (i) the subcontractor candidate’s understanding of the Major Subcontract scope of work;
 - (ii) identification of any potential constructability issues discovered in the subcontractor candidate’s preparation of its proposal;
 - (iii) identification of any assumptions made by the subcontractor candidate in preparing its proposal;
 - (iv) an estimated cost of the portion of the Work to be performed under the Major Subcontract; and
 - (v) applicable certificates of insurance naming Owner and Host as additional insureds.
- (c) Subcontractor proposals shall be transmitted in writing to the Owner either (i) within 30 days of completion of specific design documents relating to the components of the Major Subcontract, if any, or (ii) at least 10 business days prior to commencement of cost negotiations under Section 8.2, whichever is earlier. The EPC Contractor’s transmittal of a set of subcontractor’s proposals shall identify the EPC Contractor’s recommended subcontractor.
- (d) Within 10 business days of the EPC Contractor’s transmission of a Subcontractor proposal, the Owner shall send written notice to the EPC Contractor identifying the approved subcontractor (“Major Subcontractor”) and the EPC Contractor shall enter into a Major Subcontract with such Major Subcontractor.
- (e) The cost estimates included in each Subcontractor proposal are estimates only. EPC Contractor shall require that each Major Subcontractor shall participate in the transparent cost negotiation process set forth in Section 8.3 of this EPC Contract. In its subcontracts, EPC Contractor shall obligate each Subcontractor to work collaboratively with the EPC Contractor and the Owner to deliver the Project within the Owner’s Project Budget.

The EPC Contractor agrees that it will require all subcontractors to perform and complete their portion of the Work in accordance with this EPC Contract and the laws, rules and regulations of all governmental authorities having jurisdiction over the Work and shall enforce said requirements. The EPC Contractor shall require each subcontractor to assume toward the EPC Contractor all of the obligations and responsibilities which the EPC Contractor assumes to Owner pursuant to this EPC Contract and EPC Contractor shall indemnify Owner for any claims made by a subcontractor against Owner.

3.19 Training. The EPC Contractor will provide Owner's designated operation and maintenance contractor with training services. These services shall take place at the Host Site and shall include the training of up to two (2) people in the operation and maintenance (including health, safety and environmental matters related thereto) of the Project. Additionally, the EPC Contractor shall have one (1) skilled person available by phone to address any questions regarding operation and maintenance of the Project for a period of six (6) months from the Substantial Completion Date.

3.20 Test Procedures. Within ten (10) weeks after the date hereof, the EPC Contractor will prepare and submit for approval to Owner and the designated Owner's Engineer a written proposal containing test procedures for testing the performance of the Project against the Supplier Guarantees (the "Test Procedures") as required by Section 6.2. The Test Procedures will be incorporated as Exhibit C to the EPC Contract. The Test Procedures will be carried out in such a manner as to determine whether applicable Supplier Guarantees for the Project have been met. The Test Procedures will not include performance tests on the Project's individual subsystems which will be tested to the extent described in Section 6.2 prior to or concurrently with the implementation of the Test Procedures.

3.21 Continuing Test Procedures. Notwithstanding EPC Contractor's obligation above and during the Warranty Period set forth under Section 11.1, Owner shall have the right to perform such additional tests of performance of equipment from time to time as may be reasonable to ensure such equipment is operating in accordance with its specifications.

3.22 No Litigation. EPC Contractor represents and warrants that there is no action, suit or proceeding against the EPC Contractor or any affiliate thereof before any court or arbitrator or any governmental body, agency or official pending, or, to the EPC Contractor's knowledge, threatened which would affect the ability of the EPC Contractor to perform any of its obligations hereunder or could otherwise encumber the Project or EPC Contractor's interest in the Project. After the execution of this EPC Contract, the EPC Contractor agrees to give Owner immediate notice if any such action, suit or proceeding shall be commenced or threatened.

3.23 Toxic Substances. If the EPC Contractor encounters or recognizes at the Project Site any material known or reasonably believed to be hazardous, the EPC Contractor shall immediately stop the Work and report the condition to Owner in writing. The EPC Contractor shall cooperate in implementing measures to remove or contain said material and the Contract Price shall be equitably adjusted by Change Order for such removal or containment work performed by the EPC Contractor. Owner represents that it has no knowledge of any environmental hazard or condition on the Project Site which would materially affect or hinder the ability of the EPC Contractor to meet its obligations under this EPC Contract.

SECTION 4. HOST SITE

4.1 Description of Host Site. The EPC Contractor shall construct the Project on the Host Site depicted in Exhibit E.

4.2 Rights in Host Site. Owner will ensure that the Host grants to the EPC Contractor a license to enter upon and to use the Host Site for the purposes of performing the Work. The EPC Contractor shall

occupy and use the Host Site solely for the purpose of performing the Work in accordance with the provisions of this EPC Contract. The EPC Contractor shall not occupy or use any part of the Host Site for any purpose, operation or use which is not necessary or incidental to the purposes set forth in this EPC Contract.

4.3 Host Site Acceptance. The EPC Contractor acknowledges that it has, by careful examination, satisfied itself as to the nature, design and location of the Host Site, the suitability of the design of the Host Site for the performance by the EPC Contractor of the Work, the character of equipment and facilities needed prior to and during construction of the Project, the general and local conditions and other matters relating to the Host Site which can in any way affect the performance of the EPC Contractor under this EPC Contract, and represents it has found the same to be acceptable and satisfactory.

4.4 Security of Site. The EPC Contractor shall be responsible and liable for the security and protection of the Project and all related equipment and materials located within the work zone, staging and storage areas located within the Host Site or in its vicinity or incorporated in the Project until the Substantial Completion Date, provided, however, EPC Contractor shall remain responsible for all equipment and materials of EPC Contractor and its subcontractors until the Final Acceptance Date.

4.5 Rights of Access. Owner, the Owner's Engineer and each of their respective duly authorized agents, servants, employees or invitees ("Authorized Representatives") shall have the right of access to enter upon the Host Site at all reasonable times in order to inspect the progress of construction of the Project and to verify that such construction is being performed in accordance with this EPC Contract. No such inspection or verification shall in any way limit or relieve the EPC Contractor of any of its obligations hereunder. Owner, the Owner's Engineer and their respective Authorized Representatives shall be subject at all times during their presence on the Host Site to reasonable rules and regulations of the EPC Contractor, and host, with respect to safety and security.

4.6 Clean Up. The EPC Contractor at all times shall keep the Host Site free from accumulation of excess waste materials or rubbish caused by its performance of the Work. At the completion of the Work, the EPC Contractor shall remove from the Host Site all of its waste materials, tools, equipment, machinery and surplus materials not constituting part of the Project. If the EPC Contractor fails to clean up as provided in this EPC Contract, Owner may do so and the cost shall be back-charged or charged to the EPC Contractor.

4.7 Concealed Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the EPC Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the EPC Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Contract Price shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within twenty-one (21) days after the claimant becomes aware of the conditions.

SECTION 5. UTILITIES AND SERVICES

N/A, Host Site has existing utility services.

SECTION 6. OPERATIONAL TESTING; FINAL ACCEPTANCE

6.1 Preliminary Start-Up. Prior to the commencement of any formal operational tests of the Project pursuant to Section 6.2, the EPC Contractor shall conduct a preliminary start-up operation of the Project

and its ancillary systems. The EPC Contractor shall use its best efforts to give Owner and the Owner's Engineer not less than five (5) days prior notice of the date on which a preliminary start-up operation of any subsystem or the Project as a whole is to be commenced. Owner, the Owner's Engineer and their respective Authorized Representatives shall be entitled to attend the preliminary start-up operation of all or any portion of the Project.

6.2 Formal Operational Tests. The EPC Contractor may, upon not less than five (5) days prior written notice to Owner and the Owner's Engineer, commence formal operational tests of the Solar System. The EPC Contractor shall provide staff operators with training required for their operation of each subsystem and the Project as a whole, and accepts sole responsibility for its operation of the Project during operational tests and subsequent operations as provided in Section 6.7. All operational tests shall be conducted in the presence of the Owner's Engineer, if the Owner's Engineer desires to be present (provided, however, that the Owner's Engineer shall not have the ability to delay the commencement of any test). In addition, all operational tests shall be in conformance with (i) the approved Test Procedures, (ii) this EPC Contract, (iii) the applicable requirements contained in federal, state or local laws, regulations and permits, and (iv) Prudent Solar Industry Practices. Owner and its Authorized Representatives shall have the right to be present for any operational tests. If any operational tests shall fail to satisfy any Supplier Guarantees in accordance with Section 6.4, such operational test shall be repeated upon not less than twenty-four (24) hours prior telephonic or written notice to Owner and the Owner's Engineer. The date on which operational tests are completed and the Project shall have met all of the Supplier Guarantees shall be referred to herein after as the "Test Completion Date."

6.3 Test Results. After completion of all such operational tests, the EPC Contractor shall determine and submit to Owner and the Owner's Engineer, in writing, two (2) copies of the raw data and results of each such test. If any operational test results indicate any component or system did not achieve the required standard, the EPC Contractor shall provide its recommendation of what changes will be made and provide a timeline therefor.

6.4 Satisfaction of Conditions. Within five (5) business days after its receipt of the results of tests or reports described in Section 6 (or such other time period as Owner and the EPC Contractor agree in writing as is satisfactory), Owner shall respond in writing to the EPC Contractor, with a copy to the Owner's Engineer, as to (i) whether a performance test was performed in accordance with the approved Test Procedures, (ii) whether such performance tests satisfied the relevant Supplier Guarantees or other relevant standards, and (iii) whether the relevant condition has been satisfied. Among other reasons, the failure of the Owner's Engineer to agree that a test is in accordance with the Test Procedures or that a test satisfied the applicable standard or that some other relevant condition has been met shall be deemed sufficient basis for a negative response by Owner. If such response is negative, Owner shall include a full description of the basis of such negative response. Upon its receipt of any such negative response, the EPC Contractor shall take reasonable actions to cure the defect in performance or the unsatisfied condition noted by Owner in such response and perform such test again, if necessary.

6.5 Substantial Completion. Substantial completion shall be achieved on or before the Scheduled Completion Date, and the Project shall be deemed substantially complete upon the satisfaction by Owner of all of the following conditions ("Substantial Completion"):

- (a) Mechanical Completion of the Project has been achieved and the Work is complete with the exception of those items specified in the punch list delivered by the EPC Contractor to Owner pursuant to paragraph (g) of this Section 6.5;
- (b) Operational testing of the Project and commissioning have been completed in accordance with the Test Procedures satisfactorily and in accordance with the terms of the EPC Contract;

- (c) The Project is ready to be operated in the manner for which the Project was intended;
- (d) The Project is complete to the Point of Delivery;
- (e) The EPC Contractor shall have delivered to Owner the documentation required by paragraphs (a) through (d) of Section 3.6 and Exhibit B;
- (f) The Project, the Host Site, and Owner's rights therein are free and clear of all liens, claims, security interests or encumbrances created by the EPC Contractor, its subcontractors, sub-subcontractors, their agents and employees or otherwise arising out of the Work, other than those expressly permitted by Section 3.15;
- (g) The EPC Contractor shall have delivered to Owner a punch list ("Punch List"), which will list all items of the Work not yet completed and the cost of completing each of such items, the aggregate cost of completing all of such items does not exceed 3% of contract value and such incomplete portion of the Work does not, and will not at any time during its completion, impair the normal daily operation of the Project in any way; and
- (h) The EPC Contractor shall have delivered to Owner its certificate that all of the preceding conditions in this Section 6.5 have been satisfied.

Owner shall notify EPC Contractor in writing within ten (10) business days after receipt of the certificate of EPC Contractor set forth in Section 6.5(h) above if Owner, in its reasonable discretion, has determined that all of the preceding conditions of this Section 6.5 have been satisfied, which determination may be withheld if, among other reasons, Owner receives a statement from the Owner's Engineer stating that one or more of the preceding conditions have not been satisfied. Once Owner has signified its determination that the foregoing conditions have been satisfied and accepts the Project, subject to Final Acceptance in accordance with Section 6.6, by delivering to the EPC Contractor notice of such acceptance accompanied by the payment required by Section 8, the EPC Contractor shall turn over care, custody and control and operation of the Project to Owner or its designee. The date upon which the EPC Contractor submits the certificate referred to in (h) shall be the "Substantial Completion Date," provided Owner accepts the Project as set forth above.

6.6 Final Acceptance. The EPC Contractor shall complete all Work that is incomplete on the Substantial Completion Date promptly after the Substantial Completion Date. The Project shall be deemed to be finally accepted by Owner upon the satisfaction of all of the following conditions ("Final Acceptance"):

- (a) The Work and all Punch List items are complete in all material respects.
- (b) The EPC Contractor shall have delivered all documentation required to be delivered prior to Final Acceptance.
- (c) The EPC Contractor shall have fully complied with its obligations under Section 4.6;
- (d) The Project, the Project Site, and Owner's rights therein are free and clear of all liens, claims, security interests or encumbrances created by the EPC Contractor, its subcontractors, sub-subcontractors, material suppliers, their agents and employees; and
- (e) The EPC Contractor shall have delivered to Owner the EPC Contractor's certificate that all of the preceding conditions in this Section 6.6 have been satisfied.

Owner shall notify EPC Contractor in writing within ten (10) business days after receipt of the certificate of EPC Contractor set forth in Section 6.6(e) above if Owner has determined that all of the preceding conditions of this Section 6.6 have been satisfied, which determination may be withheld if, among other reasons, the Owner shall receive a statement from the Owner's Engineer stating that one or more of the preceding conditions have not been satisfied. The date on which all of the foregoing conditions are satisfied shall be the "Final Acceptance Date."

6.7 Operation and Maintenance of Project Prior to Substantial Completion. The EPC Contractor shall operate the Project until Substantial Completion at which time maintenance responsibility will be assumed by Owner or an independent contractor. All revenues received from the operation of the Project shall be the property of Owner. The Project shall be operated by the EPC Contractor in conformity with (i) all laws, rules, regulations, and permits applicable to the Project, (ii) the Project Operation and Maintenance Manual, or the most current draft of such manual, or if the EPC Contractor has not yet prepared such manual, to the extent practicable, in conformity with the portions of the Maintenance Manual then completed or known to the EPC Contractor, and with respect to each component system or part of the Project in conformity with the recommendations of the manufacturer of such component system or part, including the providing of all required maintenance, repair and consumables. The EPC Contractor will use its reasonable efforts to maximize the amount of electricity sold at the Point of Delivery while it operates the Project pursuant to this section to the extent it can do so without interference with the Work.

6.8 Defective Materials and Workmanship. The acceptance of any materials, equipment or any workmanship by the Owner or the Owner's Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the EPC Contractor. Any such condemned material or equipment shall be immediately removed from the site of the project by the EPC Contractor at the EPC Contractor's expense. The EPC Contractor shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the EPC Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.

Notwithstanding any certificate which may have been given by the Owner or the Owner's Engineer, if any materials, equipment or any workmanship which does not comply with the requirements of this EPC Contract shall be discovered within one (1) year after Final Acceptance, the EPC Contractor shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner, or such later date as the parties may mutually agree subject to equipment availability. If any such defective materials, equipment, or workmanship so replaced or repaired is found to be defective within one year after the completion of the replacement or repair, the EPC Contractor shall replace or remedy such defective materials, equipment, or workmanship. In the event of failure by the EPC Contractor so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the EPC Contractor shall pay to the Owner the cost and expense thereof.

SECTION 7. LATE COMPLETION

7.1 Payment by EPC Contractor. If the Substantial Completion Date does not occur on or before the Scheduled Completion Date (as such may have been extended from time to time hereunder) resulting from EPC Contractor's failure to fulfill its obligations pursuant to the terms of this Contract, the EPC Contractor shall pay to Owner the sum of One Hundred Fifty dollars (\$150) per day through Substantial Completion, or up to any termination by Owner (the "Liquidated Damages"). The parties recognize that

time is of the essence and that there are delays, expense and difficulties involved in proving the actual losses in a judicial proceeding, and agree that the Liquidated Damages are reasonable compensation to Owner. This provision on Liquidated Damages does not prohibit Owner from seeking and obtaining all other relief at law or in equity including an award of fees and costs as may be determined in accordance with Section 14.1, provided that Liquidated Damages as provided herein shall be Owner's sole remedy for delay. EPC Contractor shall use its best efforts to achieve Substantial Completion by the Scheduled Completion Date. Liquidated Damages will be limited to 2.5% of contract value.

7.2 Terms of Payment of Liquidated Damages. Liquidated Damages which are undisputed may, at the option of Owner, be deducted from the Contract Price and may be withheld from any payment due the EPC Contractor. In the event that the undisputed Liquidated Damages exceed the remaining payments on the Contract Price, the EPC Contractor shall be responsible to pay to Owner all Liquidated Damages owed within fifteen (15) days of demand of Owner. If the EPC Contractor disputes the calculation or imposition of the Liquidated Damages, the dispute shall be resolved in accordance with Section 14.1 of this EPC Contract.

SECTION 8. PAYMENT

8.1 Owner's Project Budget. Based on the information then available to the Owner, at the beginning of the Project the Owner shall provide to the EPC Contractor a Project Budget estimating the total Project costs. The EPC Contractor shall review and provide feedback on the Project Budget. Based on such review, the Owner may revise the Project Budget. The Project Budget cannot be revised without Owner approval.

8.2 Contract Price. In consideration of the performance under this EPC Contract, Owner shall pay the EPC Contractor a Contract Price (subject to the Guaranteed Maximum Price as defined in Section 8.3) in current funds for the EPC Contractor's performance of the Contract. The Contract Price will be the sum of: (i) the actual cost of the Work ("Cost of Work") plus (ii) a 10% margin on the Cost of Work ("EPC Contractor's Fee"). Payment shall be made pursuant to the terms and conditions set forth in Exhibit B.

8.3 Guaranteed Maximum Price. In conjunction with the negotiation of the Contract Price, the Parties will negotiate a Guaranteed Maximum Price ("GMP"). The Contract Price shall not exceed the Guaranteed Maximum Price subject to additions and deductions by Change Order as provided in the EPC Contract Documents. Once the GMP is agreed upon, it will be incorporated into the EPC Contract as an addendum establishing the Contract Price.

8.3.1 Contingency. The Guaranteed Maximum Price shall include a negotiated contingency for the purpose of paying unanticipated costs of the Work. The categories of unanticipated costs that may be covered with the contingency shall be identified when the Guaranteed Maximum Price is negotiated. EPC Contractor and Owner expressly acknowledge that one of the purposes of the collaborative design phase of the Project is to reduce unanticipated costs of the Work and the amount of any negotiated contingency. If the contingency is not utilized, it reverts to the Owner.

8.4 EPC Contractor Fee at Risk. Payment of no less than twenty-five percent (25%) and no more than fifty percent (50%) of the negotiated EPC Contractor Fee shall be contingent on the EPC Contractor's ability to deliver the Project to the Owner at the negotiated Contract Price. The exact amount of the EPC Contractor Fee at Risk shall be negotiated with the Contract Price and Guaranteed Maximum Price. In the event that the actual Cost of the Work exceeds the Contract Price, the EPC Contractor Fee at Risk shall be applied to offset the cost overrun. In the event that the difference between the Contract Price and the actual Cost of Work does not exceed the EPC Contractor Fee at Risk, the EPC Contractor shall be paid the balance of the EPC Contractor Fee at Risk.

8.5 Transparency in Cost Negotiations. Owner and EPC Contractor shall base their cost negotiations on a free-flow of accurate information concerning the Cost of Work, including but not limited to subcontractor costs. Owner shall provide EPC Contractor with all documents relating to its preliminary estimate of Project costs for purposes of developing a preliminary Project Budget. At the end of the design phase, EPC Contractor shall provide Owner a detailed breakdown of its estimated Cost of Work, proposed EPC Contractor's Fee and Guaranteed Maximum Price, including all supporting documentation.

8.6 EPC Contractor's Compensation During Planning and Design Phases. EPC Contractor's Fee negotiated at the end of the design phase shall cover all planning and design phase services. In the event that the EPC Contract is terminated by the Owner at the end of the design phase, the EPC Contractor shall receive the Termination Costs set forth in Section 12.2.

8.7 Savings. If the actual Cost of the Work is lower than the GMP plus contingency, then no less than fifty percent (50%) of the difference shall be paid to the EPC Contractor and the balance of the savings shall be paid to the Owner.

SECTION 9. AMENDMENTS; PERMITTED CHANGES; CHANGE ORDERS

9.1 Amendments. Except as provided in Sections 9.2 and 9.4, this EPC Contract may be amended or modified only by a written agreement between Owner, Owner's Engineer, if any, and the EPC Contractor.

9.2 Permitted Changes. Without obtaining the consent or agreement of Owner, the EPC Contractor may make minor modifications to the Design/Build Specifications in accordance with the standards of this EPC Contract prior to the commencement or during the performance of the Work in order to improve the Project in any way or to take into account conditions of the Project Site or changes in technology or in the components of the Project being supplied by others, provided that any such modification (i) does not result in an increase in the Contract Price or an extension of the Scheduled Completion Date, (ii) is not inconsistent with the intent or any provision of this EPC Contract, (iii) will not adversely affect the maintenance characteristics or costs associated with the operation and maintenance of the Project, or the requirements for interconnection by Interconnecting Utility, and (iv) does not result in any increased capital or operating costs for the Project, including, without limitation, any costs for interconnection. Any such modification or change to this EPC Contract or the Work described in this Section 9.2 shall constitute a "Permitted Change." The EPC Contractor shall notify Owner and the Owner's Engineer of any Permitted Change in advance of performing the same, and shall provide to each, concurrently with such notice, any required revisions to the Schedules to this EPC Contract and other documents required hereunder to reflect such Permitted Change.

9.3 Change Orders. Any amendment or modification of this EPC Contract or the Work (including, without limitation, any equitable adjustment of the Contract Price or Substantial Completion Date made pursuant to this EPC Contract), other than any Permitted Change, shall be referred to herein as a "Change Order." As promptly as practicable, and only by written proposal of a Change Order by Owner or the EPC Contractor, the EPC Contractor, shall prepare and deliver to Owner and the Owner's Engineer, an estimate of the financial, scheduling, operations, maintenance and performance (including guarantees and warranties) impact of such Change Order. Upon Owner's written authorization, the EPC Contractor shall prepare a written statement of such Change Order setting forth on the assumption of the effectiveness of such Change Order, (i) a firm revised Contract Price upward or downward, (ii) a revised schedule of performance, (iii) all modifications of the Project and the Supplier Guarantees and Test Procedures and (iv) any modification of the EPC Contractor's Warranty as set forth in Section 11.1 or other obligations hereunder. The EPC Contractor shall submit its costs with appropriate back-up, in preparation of such proposed Change Order as a consequence of which the Contract Price may be revised. The Change Order

(either add or deduct) will include 10% margin for EPC Contractor overhead and profit. Such Change Order shall become effective, and the EPC Contractor shall proceed to perform in accordance therewith, only after notice, approval and written agreement shall have been given by Owner.

9.4 Changes Required by Law. In the event that any change in the Work is required as a consequence of any change after the date in any applicable law, regulation, ordinance or order of any governmental or regulatory authority (a "Required Change Order") which was not reasonably foreseen by the EPC Contractor at the time of execution of this EPC Contract, the EPC Contractor shall prepare a written statement of such Required Change Order in accordance with the procedure set forth in Section 9.3. Required Change Orders shall become effective upon Owner and Owner's Engineer consenting thereto in writing. Any increase in the Contract Price resulting from any Required Change Order shall be borne by Owner. The EPC Contractor represents to Owner that, after reasonable investigation, the EPC Contractor has no knowledge of any such governmental or regulatory change which could affect the Work hereunder.

SECTION 10. INSURANCE; PERFORMANCE AND PAYMENT BONDS

10.1 Insurance

(a) The EPC Contractor shall obtain prior to the date of this EPC Contract, and shall maintain on and after such date until the Final Acceptance Date (unless a longer time is stated herein), insurance coverages of the types and in amounts not less than the minimums specified in Exhibit G, attached hereto.

(b) Prior to the date hereof, the EPC Contractor shall obtain the approval of Owner of the insurers with which the insurance referred to in Section 10.1 (a) shall be obtained, such approval not to be unreasonably withheld. Thereafter, the EPC Contractor shall notify Owner in writing at least thirty (30) days prior to obtaining coverage from any additional insurer or new insurer, and Owner shall have the right to approve such insurer, such approval not to be unreasonably withheld.

(c) All insurance (other than workers' compensation insurance) maintained by the EPC Contractor or its subcontractors on which Owner is relying pursuant to Section 10.1(a) shall:

- (i) Specify Owner and Host as additional insureds;
 - (ii) The EPC Contractor shall promptly provide the Owner copies of any notices to the EPC Contractor under such policies of any default or other act or omission by the EPC Contractor which might invalidate or render unenforceable, in whole or in part, such policy or result in the lapse thereof, in whole or in part;
 - (iii) The EPC Contractor shall allow the Owner the right, as against the insurer, to pay any premium due if the EPC Contractor shall neglect to do same and the EPC Contractor shall immediately pay the amount of such premium to the Owner;
 - (iv) Provide that no cancellation, lapse or material change thereof shall be effective until at least thirty (30) days after being mailed to Owner and all other additional insureds;
 - (v) Waive any right of subrogation of the insurers against Owner and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Owner;
- (d) Each liability policy:

- (i) Shall be primary without right of contribution from any other insurance which is carried by the insured, to the extent that such other insurance provides it with contingent or excess liability insurance with respect to its interest as such in the insured property, and
- (ii) Shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(f) Any insurance required pursuant to this Section 10.1 may be maintained by use of a basic policy and an applicable umbrella policy.

10.2 Certificates of Insurance. Certificates of insurance in a form reasonably satisfactory to Owner shall be furnished by the EPC Contractor prior to the commencement of the Work, and renewal certificates shall be provided ten (10) days prior to any policy renewal. EPC Contractor will provide Owner with copies of policies upon request of Owner.

10.3 Damage or Taking. If prior to Substantial Completion the Project or any component thereof or any portion of the Project Site shall be damaged or destroyed by fire or other casualty of any kind or nature, or shall be taken in condemnation or other eminent domain proceedings, the EPC Contractor shall promptly deliver to Owner a report (the "Casualty Report") containing (i) a cost estimate for the repair and restoration of the Project and the Project Site by the EPC Contractor, (ii) a detailed description of the manner in which it is proposed to repair and restore the Project and the Project Site to the condition and state of repair existing prior to such casualty or taking and (iii) a statement of the amount of insurance proceeds or condemnation proceeds available to be applied against the cost of such repair and restoration. Within sixty (60) days after receipt of such report, Owner may elect by notice to the EPC Contractor, either (i) to require the EPC Contractor to repair and restore the Project and the Project Site in accordance with the repair and restoration proposal contained in the Casualty Report at a cost to Owner of no more than the insurance proceeds received with respect to such damage or destruction (in the case of damage or destruction resulting from fire or other casualty of any kind or nature) or (ii) to terminate the Work and this EPC Contract. All insurance proceeds (other than proceeds not exceeding \$10,000) or condemnation awards received by or payable to Owner or the EPC Contractor on account of any damage to or destruction or taking of the Project or any component thereof (less, in each case, the actual costs, fees and expenses incurred in the collection thereof) shall be paid to Owner. In the event that Owner elects to terminate the Work, Owner shall pay the EPC Contractor its Termination Costs in accordance with Section 12.2. In the event that Owner elects to require the EPC Contractor to repair and restore the Project in accordance with the repair and restoration proposal contained in the Casualty Report, as may be modified by Owner, Owner shall cause to be disbursed to the EPC Contractor such insurance proceeds or condemnation award as reasonably necessary for the EPC Contractor to repair and restore the Project in accordance with such proposal. All such costs and expenses in excess of such insurance proceeds or condemnation award received by Owner shall be borne by the EPC Contractor.

SECTION 11. WARRANTY

11.1 Warranty Terms. The EPC Contractor warrants that, for a period of one (1) year after the Substantial Completion Date ("Warranty Period"), all or any portion of the Work or Project will be free from defects in design, materials and workmanship ("Warranty") and any other warranty relating to any equipment incorporated into the Work that the EPC Contractor assigns to the Owner shall be solely as provided in such warranty. Except as set forth in Section 13.6 hereof, the EPC Contractor's liability under the foregoing Warranty shall be limited to the redesign, repair, or replacement of the part of the Work (overhead and profit to be included in that liability) which proves to have had a defect in design, materials or workmanship in accordance with Section 11.2.

11.2 Remedy of Defects.

(a) The EPC Contractor shall promptly correct all defects in the design, materials or workmanship of the Project or any component thereof which the EPC Contractor receives written notice of from Owner or Owner's Engineer prior to the expiration of the Warranty Period. All such defects shall be corrected at the expense of the EPC Contractor and to the reasonable satisfaction of Owner by redesigning, repairing or replacing the defective Work and conforming the Work with the final specifications and final plans delivered pursuant to Section 3.6. Costs, expenses, and other amounts whatsoever (overhead and profit included) incidental to such corrective action, including removal, disassembly, reinstallation, reconstruction, retesting and re-inspection as may be necessary to correct the defect or demonstrate that the previously defective Work conforms to the requirements of this EPC Contract, shall be borne by the EPC Contractor as a Cost of the Work (with saving being adjusted to reflect such added cost if incurred after any allocation of saving). Should such defect affect the ability of Project to produce electricity, in whole or part, and the EPC Contractor fails to commence the necessary redesign, repair, replacement and tests within three (3) business days of receipt of notice from Owner of such defect, and thereafter continue to diligently pursue such redesign, repair and replacement, Owner shall have the right (but not the obligation), in addition to other remedies at law or in equity, to commence to perform or cause to be performed the same at the EPC Contractor's expense. Should such defect not affect the ability of Project to produce electricity and the EPC Contractor fails to commence the necessary redesign, repair, replacement and tests within ten (10) business days of receipt of notice from Owner of such defect, and thereafter continue to diligently pursue such redesign, repair and replacement, Owner shall have the right (but not the obligation), in addition to other remedies at law or in equity, to commence to perform or cause to be performed the same at the EPC Contractor's expense. Failure to perform the obligations set forth in this paragraph (a) will constitute a breach of this EPC Contract.

(b) If the EPC Contractor is not engaged to perform the operation and maintenance of the Project under a separate contract for the operation and maintenance of the Project, the obligation of the EPC Contractor under the Warranty shall be waived and voided with respect to any of the following, and the EPC Contractor shall not, thereafter, be responsible for any failure:

- (i) Resulting from Owner's or the Project operator's abuse or neglect, including but not limited to, any operation, installation, application, or maintenance practice not reasonably consistent with the Project Operation & Maintenance Manual;
- (ii) Resulting from unauthorized modifications or repairs of the Work (other than those made by the EPC Contractor under this EPC Contract);
- (iii) Caused by repairs performed with non-genuine manufacturer parts (other than those made by the EPC Contractor under this EPC Contract); or
- (vii) To make the Work available to the EPC Contractor or its authorized representatives.

11.3 Patent and Other Proprietary Rights. If, at any time prior to the expiration of the period during which a warranty is in effect, the use by Owner of any part of any equipment, material or process or any part thereof furnished by the EPC Contractor under this EPC Contract is limited or prohibited with respect to the Project because such use would constitute an infringement of any patent, trade secret, trademark, copyright or other proprietary right, the EPC Contractor, at its sole expense, shall procure the necessary licenses to use the infringing equipment, material or process, or, with Owner's prior written approval, replace same with substantially equal but non-infringing equipment, materials, or processes or modify same to be non-infringing; provided that any such substituted or modified equipment, materials, or processes shall meet all the requirements and be subject to all the provisions of this EPC Contract, and

that such replacement or modifications shall not modify or relieve the EPC Contractor of its obligations under this EPC Contract.

11.4 Supplier and Subcontractor Warranties. Upon the Substantial Completion Date, EPC Contractor shall assign to Owner all rights to the warranties of the equipment and performance provided to EPC Contractor. EPC Contractor shall enforce such warranties for the one (1) year Warranty Period of this EPC Contract. In each case where the EPC Contractor obtains warranties from its suppliers or subcontractors which are more favorable than the warranties contained in this EPC Contract, the EPC Contractor shall enforce such warranties for the benefit of Owner to the full extent possible under the terms of such warranties, and, upon written request by Owner, shall assign such warranties to Owner. To the extent any such warranty extends beyond the one (1) year Warranty Period of this EPC Contract, at the request of, and at the expense of, Owner, EPC Contractor shall reasonably assist Owner with the enforcement of such extended warranties. The EPC Contractor shall provide Owner with copies of all such warranties on or prior to the Substantial Completion Date.

SECTION 12. DEFAULT; TERMINATION

12.1 Default by EPC Contractor. If at any time prior to Substantial Completion, one or more of the following events (each such event being called an “Event of Default”) shall occur:

- (a) The EPC Contractor shall fail to complete the Work on the Scheduled Completion Date (as it may be extended hereunder) and satisfy the conditions precedent for Substantial Completion set forth in Section 6.5 for any reason other than an event of *Force Majeure*;
- (b) The EPC Contractor shall fail to or neglect to perform any other covenant, condition, or agreement of contract contained herein (and not referred to in clause (i) above) and such default shall continue for ten (10) days after written notice to the EPC Contractor specifying the default and demanding that the same be remedied; provided, however, if such default cannot be reasonably remedied within said ten (10) day period, but can be remedied prior to the Scheduled Completion Date, and the EPC Contractor has commenced remedial action within such ten (10) day period, there shall be no Event of Default as a result thereof so long as the EPC Contractor is diligently seeking to remedy such default in a timely manner, and thereafter if the EPC Contractor has remedied such default;
- (c) Any representation or warranty made by the EPC Contractor herein or in any certificate, statement, document or Application for Progress Payment given to Owner pursuant to the terms shall prove to be false, incorrect or misleading as of the date on which it was made, and any material adverse consequences to Owner directly caused thereby shall not have been remedied within ten (10) days after written notice thereof shall have been given to the EPC Contractor by Owner; provided, however, if such consequences can be remedied prior to the Scheduled Completion Date, and the EPC Contractor has commenced remedial action within such ten (10) day period, there shall be no Event of Default as a result thereof so long as the EPC Contractor is diligently seeking to remedy such consequences, and thereafter if the EPC Contractor has immediately remedied such consequences;
- (d) The EPC Contractor shall take any action or fail to take any action which shall be an Event of Default pursuant to the terms hereunder;
- (e) The EPC Contractor shall file a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other federal or state bankruptcy law, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law relating to bankruptcy,

insolvency, winding-up, or adjustment of debts, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of the EPC Contractor as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code, any other Federal or state bankruptcy law shall be filed in any court and the EPC Contractor shall consent to or acquiesce in the filing thereof or such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or

- (f) A custodian, receiver, trustee or liquidator of the EPC Contractor or of all or substantially all of the assets of the EPC Contractor or of the EPC Contractor's interest in this EPC Contract, shall be appointed in any proceeding brought against the EPC Contractor and shall not be discharged within ninety (90) days after such appointment, or if the EPC Contractor shall consent to or acquiesce in such appointment;

then in any such case Owner may take control of the Project and terminate this EPC Contract and recover, forthwith from the EPC Contractor on demand as a consequence of the EPC Contractor's default hereunder, as damages for loss of bargain and not as a penalty, Liquidated Damages in accordance with Section 7 hereto, and any other applicable provision herein. Owner shall apply all Contract Price retainage withheld by Owner against the EPC Contractor's liability, if any.

12.2 Termination at Owner's Option. In the event (i) the Project or any substantial portion thereof has been damaged or destroyed by fire or other casualty of any kind or nature or if the Project Site or any substantial portion of the Project shall be taken in condemnation or other eminent domain proceedings, (ii) Owner is unable to perform because of action/inaction of a legislative, judicial or regulatory agency body or other governmental authority and/or any event of *Force Majeure*, or (iii) a material adverse change shall have occurred in the business, properties or condition (financial or otherwise) of the EPC Contractor (which would materially adversely affect the EPC Contractor's ability to perform its obligations hereunder), Owner may terminate the work and this EPC Contract upon seven (7) days prior notice to the EPC Contractor. In the event of any such termination, Owner shall pay the EPC Contractor (i) for all Work performed prior to such termination less the amounts previously paid by Owner to the EPC Contractor for Work performed including Fee earned and (ii) all costs and expenses already incurred by the EPC Contractor if first proven by receipts and other evidence of actual expenditures including costs and expenses incurred in connection with contractual commitments undertaken in good faith prior to the EPC Contractor's receipt of Owner's termination notice (the "Termination Costs").

EPC Contractor agrees that the Termination Costs and amounts due for the portion of the Work performed, including all retainage, will be the sole amounts recoverable by it from Owner in the event of any termination pursuant to this Section 12.2, and shall use its best efforts to mitigate the amount of Termination Costs and in the event of any such termination, and that the sum of the portion of the Contract Price previously paid and the Termination Costs shall in no case exceed the Contract Price.

12.3 Effect of Owner Termination. Upon receipt of any termination notice pursuant to Section 10.3, 12.1 or 12.2 the EPC Contractor shall immediately:

- (a) Stop the performance of all Work and services hereunder, except as may be necessary to carry out such termination;
- (b) Issue no further purchase orders and enter into no further contracts relating to the Project except with the written consent of Owner;

- (c) Assign to Owner upon Owner's request all rights of the EPC Contractor under contracts or purchase orders entered into by the EPC Contractor in connection with this EPC Contract;
- (d) To the extent possible, upon Owner's request, terminate existing contracts and purchase orders entered into by the EPC Contractor pursuant to this EPC Contract; and
- (e) Take any other action toward termination of its Work and services hereunder which Owner shall direct.

Upon termination of this EPC Contract pursuant to Section 10.3, 12.1 or 12.2, Owner shall be entitled to any equipment, supplies and materials for which Owner has made payment to the EPC Contractor, and to all Proprietary Documents, plans, drawings and specifications, including portions thereof, relating to the Project or the Project Site then in the possession of the EPC Contractor. Upon such termination and effective therewith, the EPC Contractor waives any and all claim for damages and equitable relief whatsoever, including loss of anticipated profits on account of this EPC Contract, provided that Owner pays the EPC Contractor for all amounts due to the EPC Contractor up to the date of termination in accordance with the provisions of Section 8, 10.3 or 12.2, as the case may be.

In addition, the EPC Contractor shall be liable for all reasonable attorneys' fees, interest and other costs and expenses incurred by Owner, from the time Owner incurs them, until final disposition by settlement, arbitration decision, by reason of the occurrence of any Event of Default by the EPC Contractor or by any EPC Contractor breach hereof and the exercise of Owner's remedies with respect thereto, including all said amounts incurred in connection with the return of the Project, the completion of the Work or any suit to enforce Owner's rights under this EPC Contract.

12.4 Owner's Right to Carry Out the Work. If the EPC Contractor shall default or neglect to carry out any of its obligations hereunder and shall fail within ten (10) days after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to any other remedy it may have, make good such deficiencies provided, however, in the case of an emergency, Owner may orally attempt to inform the EPC Contractor of such situation and immediately commence corrective action. In either such case, the cost of correcting such deficiencies shall be deducted from the payments then or thereafter due the EPC Contractor, and if no such payments are so due or such cost exceeds the balance so due, the EPC Contractor shall pay to Owner such cost or the portion in excess of the balance so due the EPC Contractor within ten (10) days of an invoice therefor. The exercise by Owner of any of its rights under this Section 12.4 shall not diminish any of the EPC Contractor's obligations hereunder or relieve the EPC Contractor from full compliance with the requirements hereof.

12.5 Termination by EPC Contractor. The EPC Contractor may by written notice to Owner terminate this EPC Contract only on account of any of the following circumstances:

- (i) Unless a financially responsible person or entity reasonably acceptable to the EPC Contractor assumes the obligations of Owner hereunder, in the event Owner shall file a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or for an arrangement pursuant to any other federal or state bankruptcy law, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, winding-up or adjustment of debts, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of Owner as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the

Bankruptcy Code any other federal or state bankruptcy law shall be filed in any court and Owner shall consent to or acquiesce in the filing thereof or such petition or answer shall not be discharged or denied within one hundred twenty (120) days after the filing thereof;

- (ii) Unless a financially responsible person or entity reasonably acceptable to the EPC Contractor assumes the obligations of Owner hereunder and cures all then existing defaults by Owner with respect thereto, in the event a custodian, receiver, trustee or liquidator of Owner or of all or substantially all of the assets of Owner, shall be appointed in any proceeding brought by Owner, or any such custodian, receiver, trustee, or liquidator shall be appointed in any proceeding brought against Owner and shall not be discharged within one hundred twenty (120) days after such appointment, or if Owner shall consent to or acquiesce in such appointment; or
- (iii) Unless a financially responsible person or entity reasonably acceptable to the EPC Contractor assumes the obligations of Owner hereunder and cures all then existing defaults by Owner with respect thereto, in the event Owner shall fail to make any payment due to the EPC Contractor under the terms of this EPC Contract within sixty (60) days after the later of the date such payment is due and payable (except with respect to any payment or portion thereof that Owner shall be disputing in accordance with the provisions of this EPC Contract) and the date on which Owner received a written demand for payment, including, without limitation, an Application for Progress Payment; provided, however, notwithstanding the time limits set forth in clauses (i), (ii) and (iii) hereof, the EPC Contractor may suspend performance of the Work fifteen (15) days after the date of the occurrence of an event set forth in such clauses and for so long thereafter as such condition remains in effect.
- (iv) If Owner shall fail, without justification, to make payment to EPC Contractor within fifteen (15) days of the due date of such payment in accordance with Exhibit B.

SECTION 13. INDEMNIFICATION, DEFENSE OF SUITS; AND RELATED MATTERS

13.1 General Indemnification by EPC Contractor. The EPC Contractor shall indemnify, defend and hold harmless Owner and the Owner's Engineer, (collectively, the "Owner Indemnified Parties" and singularly, an "Owner Indemnified Party") and each Owner Indemnified Party's directors, officers, stockholders, members, employees, agents, attorneys, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees) and lien claims by subcontractors or suppliers or sub-subcontractors and sub-suppliers, causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any claims arising out of or resulting from any and all performance of the Work; (ii) any material breach by the EPC Contractor of its obligations, covenants, representations or warranties contained in this EPC Contract, or (iii) the EPC Contractor's actions or omissions taken or made in connection with the EPC Contractor's performance of this EPC Contract. EPC Contractor shall not be responsible for indemnification if the foregoing i, ii, or iii are caused by the negligence of Owner or the unjustified lack of payment from Owner.

13.2 EPC Contractor's Toxic Substance Indemnification. The EPC Contractor agrees to indemnify, and defend the Owner Indemnified Parties from and save and hold them harmless from all costs, claims, liabilities, damages, expenses (including attorneys' fees, costs, expenses, and interest) incurred in connection with, resulting from or arising out of (i) any release occurring prior to the Final Acceptance Date of environmental contaminants inside or outside the Project Site directly caused by the misconduct or negligence by the EPC Contractor, its employees, agents or subcontractors and (ii) any

violation occurring prior to the Final Acceptance Date, of requirements of federal, state or local law, civil or criminal, or regulation relating to air, water, soil, solid waste management or disposal, hazardous or toxic substances or the protection of health or the environment directly caused by the misconduct or negligence of the EPC Contractor, its employees, agents or subcontractors.

13.3 EPC Contractor's Intellectual Property Indemnification. The EPC Contractor hereby agrees to indemnify, defend, and hold the Owner Indemnified Parties harmless from any liability, damage or claim (including attorneys' fees, costs, expenses, and interest) arising out of or in connection with the use of Proprietary Documents in connection with the Project prepared by or for EPC Contractor. The EPC Contractor also agrees to indemnify, defend and hold the Owner Indemnified Parties harmless for claims of infringement of copyrights, patent rights, and trade secret rights (including attorneys' fees, costs, expenses, and interest) arising from the Work on or incorporated into the Project for all items designed or furnished by or through EPC Contractor. EPC Contractor shall have no obligation under this paragraph with respect to intellectual property provided to it by Owner upon which it reasonably relied.

13.4 Indemnification by Owner. Owner shall indemnify, defend and hold harmless the EPC Contractor, its agents and employees (the "EPC Contractor's Indemnified Parties") from any and all claims, actions and expenses for injuries to or death of persons or damage or destruction to property if caused by reason of or as a result of the performance of any action by Owner, its employees or agents at the Project Site. Owner and the EPC Contractor hereby agree that the Owner's Engineer, their employees or agents shall not be deemed the agents of either party hereto and that the EPC Contractor shall not be deemed an agent of Owner for the purpose of Owner's indemnification herein.

13.5 Defense of Suits. Any party seeking indemnification pursuant to this Article 13 shall notify the indemnifying party of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the indemnifying party that it will assume the defense and indemnification of such claim, the indemnifying party may assert any defenses which are or would otherwise be available to the indemnified party.

13.6 Consequential Damages. The EPC Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this EPC Contract. This mutual waiver includes, without limitation, damages incurred by Owner for loss of management or employee productivity or the services of such persons, and damages incurred by the EPC Contractor for principal office expenses, the loss of overhead and profit, the loss of indirect expenses and overhead, and losses of financing, and rental expenses. This section does not affect or preclude (a) an award of Liquidated Damages under Section 7, (b) an award of fees and costs as may be determined pursuant to Section 14.1, (c) Owner's rights to enforce, or pursue a claim arising out of a breach by the EPC Contractor of the Warranty, or (d) either party's rights to actual or reasonably foreseeable costs or damages arising from the other party's material breach of this EPC Contract.

13.7 No Damages for Delay. EPC Contractor shall have no claim for any damages, costs, expenses of any kind or nature, for any suspension, delay, interruption, or acceleration of the Work on the part of Owner or any of its agents in performing any work or resulting from problems or deficiencies with materials, information, documentation and/or decisions in connection with the execution of the Work.

13.8 Notice of Claim. Any claim by the EPC Contractor under this Section 13 must be made within thirty (30) days after each occurrence of the event giving rise to such claim or within thirty (30) calendar days after the EPC Contractor first recognizes the condition giving rise to the claim, whichever date is later.

SECTION 14. CHOICE OF LAW; DISPUTE RESOLUTION

Applicable Law and Dispute Resolution Procedure. This EPC Contract and the rights and obligations of the parties hereto shall be construed in accordance with and governed by the internal laws of the State of California without giving effect to the conflict of law principles thereof. Unless otherwise expressly provided for in this EPC Contract, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under this EPC Contract. The parties agree to use their best efforts to resolve any dispute(s) that may arise regarding this EPC Contract. Any dispute that arises under or with respect to this EPC Contract that cannot be resolved shall in the first instance be the subject of informal negotiations between the parties. The dispute shall be considered to have arisen when one party sends the other party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the parties. In the event that the parties cannot resolve a dispute by informal negotiations, the parties agree to submit the dispute to nonbinding mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request that the American Arbitration Association appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the parties. The decision to continue mediation shall be in the sole discretion of each party. The parties will bear their own costs of the mediation. If the Parties are unable to resolve such dispute or controversy by mutual agreement or mediation within thirty (30) days following the conclusion of such mediation, the Parties agree that such dispute or controversy shall be submitted for arbitration before a panel of three (3) arbitrators in accordance with the provisions herein and the Construction Industry Arbitration Rules of the American Arbitration Association (“AAA”) in effect at the time of the arbitration; provided, however, that in the event of any conflict between the procedures herein and the Rules the procedures herein shall control. All arbitration shall be administered by the AAA. All arbitration shall take place in Napa, California. The Parties shall use all commercially reasonable efforts to conclude the arbitration as soon as practicable. All aspects of the arbitration including the result shall be treated as confidential and shall not be disclosed unless required by legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. The award of the arbitrators shall be binding and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. All arbitration proceedings shall be conducted in the English language, with translations into English, as necessary.

14.1 In any arbitration or judicial action (for non-monetary relief or to enforce an arbitration award), the “Prevailing Party” shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. As used herein, the phrase “Prevailing Party” shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

14.2 Performance During Dispute. While any controversy, dispute or claim arising out of or relating to this EPC Contract is pending, Owner and EPC Contractor shall continue to perform their obligations hereunder to the extent possible notwithstanding such controversy, dispute or claim. This section requires the EPC Contractor to perform disputed Work even if the EPC Contractor believes the requested Work is outside the scope of this EPC Contract and requires additional compensation.

SECTION 15. OWNER’S ENGINEER

15.1 Owner’s Engineer. Owner and EPC Contractor hereby acknowledge that Owner’s Engineer, if any, has been engaged by the Owner to act as the Owner’s representative with respect to the construction

of the Project in compliance with this EPC Contract. The Owner's Engineer shall have the same rights of access to the Project Site that Owner has.

15.2 Authority of Owner's Engineer. The responsibility of the Owner's Engineer or a representative of the Owner's Engineer, who may be present at the Project Site on a day-to-day basis shall be to observe the progress of the Work. Such representative shall not have the authority to execute Change Orders, stop the Work, mandate any change in the Work, consent to Required Change Orders or amendments to this EPC Contract but shall have the authority to concur with Permitted Changes.

SECTION 16. RELATED AGREEMENTS

16.1 Receipt of Related Agreements. The EPC Contractor agrees that it has been provided with and had a reasonable opportunity to read all the EPC Contract Documents and to ask questions about the terms and conditions of the same and to request and review additional documents and project agreements as the EPC Contractor deemed relevant to the performance of the Work and its obligations hereunder.

16.2 Compliance with Related Agreements. The EPC Contractor agrees to use its best reasonable efforts to insure that the Work is at all times done in compliance with the EPC Contract Documents.

SECTION 17. MISCELLANEOUS

17.1 Assignment. This EPC Contract shall not be assigned by either party without the written consent of the other, except that Owner may assign or collaterally assign its interest and obligations hereunder to any lender or any financial institution or institutions participating in the financing of the Project, provided that Owner remains fully responsible in accordance with the terms and conditions of this EPC Contract for all of its obligations and liabilities hereunder. The EPC Contractor shall execute all consents reasonably required to facilitate such assignment. Notwithstanding the foregoing, in the event of the Owner's acquisition or merger, this EPC Contract shall continue in full force and effect and shall be binding upon such successors and assigns of the Owner as may be the resulting or surviving entity in such acquisition or merger.

17.2 Successors and Assigns. This EPC Contract shall bind and inure to the benefit of the parties to this EPC Contract and any successor or assignee acquiring an interest hereunder consistent with Section 17.1.

17.3 Relationship of the Parties. Nothing in this EPC Contract shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

17.4 EPC Contractor is an Independent Contractor. The EPC Contractor is and shall remain an independent contractor in the performance of this EPC Contract, maintaining complete control of its personnel, workers, subcontractors and operations required for performance of the Work.

17.5 Notices. All notices, consents and other communications required or permitted by this EPC Contract shall be in writing and shall be deemed to have been given (i) when delivered by hand to an authorized representative or officer of any party, (ii) on the business day during which a party receives a telecopy prior to 4:30 p.m., local time if receipt of such telecopy is confirmed, or if received after such time, on the next business day if, receipt of such telecopy is confirmed, or (iii) three (3) business days after having been deposited in the United States mail, in registered or certified form, return receipt requested, postage prepaid, and addressed as stated below:

If to EPC Contractor:

Bright Power, Inc. DBA "BPi"
Attn: Brian Peterson
1715 2nd Street, Suite 200
Napa, CA 94559
Tel: (707)252-9990
Fax: (707)252-9992

with a copy to:

Kelly Wallace
Attorney at Law
1207 Randolph St.
Napa, CA 94559
Tel: (707)226-8595

If to Owner:

Blue Sky Utility 2017 II, LLC
PO Box 5571
Napa, CA 94581
Attn: Ran Bujanover
Tel: (415)513-2707

Changes in the respective addressees or addresses to which such notices shall be directed may be made from time to time by any such person by notice to Owner and the EPC Contractor.

17.6 Waiver. Unless otherwise specifically provided by the terms of this EPC Contract, no delay or failure to exercise a right resulting from any breach of this EPC Contract shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this EPC Contract is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this EPC Contract. Neither Final Acceptance nor occupation by Owner shall relieve the EPC Contractor of the responsibilities for all claims for labor, materials, equipment, and other possible liabilities arising out of this EPC Contract.

17.7 Survival. Except as specifically set forth herein, obligations of the parties hereto shall continue in full force and effect notwithstanding the occurrence of the Final Acceptance Date.

17.8 Headings. Captions and headings in this EPC Contract are for reference only and do not constitute a part of the substance of this EPC Contract.

17.9 Counterparts. This EPC Contract may be executed in multiple counterparts, each of which shall be deemed to be an original, or in separate counterparts.

17.10 Entire and Complete Agreement. This EPC Contract including attached Schedules, Exhibits and all other documents detailed in Section 1 constitutes the entire and complete agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof.

17.11 Supremacy and Construction. Except as specifically stated herein, this EPC Contract, together with the other EPC Contract Documents, including, without limitation, all Schedules and Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the subject matter hereof, and shall be construed harmoniously to the greatest practicable extent as to the subject matter of this EPC Contract. Except as specifically stated herein, this EPC Contract supersedes all prior communications, representations, or agreements, oral or written, among the Parties relating to the subject matter hereof.

17.12 Partial Invalidity. If any provision of this EPC Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

17.13 Confidentiality. The Parties to this EPC Contract shall keep its terms confidential and shall not disclose this EPC Contract or the contents hereof to any person other than such counsel and advisors as may owe the disclosing party a duty of confidentiality; provided, that to the extent disclosure is required under applicable law, disclosure shall be permitted to the extent required by law. EPC Contractor shall require each subcontractor to be bound to keep confidential information received by it from the Owner, the EPC Contractor or any other subcontractor pursuant to a confidentiality clause at least as restrictive as the terms of this Section 17.13.

IN WITNESS WHEREOF, Owner and EPC Contractor have caused this EPC Contract to be executed in their respective names by persons duly authorized to do so on their behalf.

OWNER:

BLUE SKY UTILITY 2017 II, LLC
a California limited liability company

A handwritten signature in black ink, appearing to read "Ran Bujanover". The signature is fluid and cursive, with the first name "Ran" and last name "Bujanover" clearly distinguishable.

By:

By: Blue Sky Utility LLC
Name: Ran Bujanover
Title: President

EPC CONTRACTOR:

BRIGHT POWER, INC. DBA "BPi"
a California Corporation

By: _____

Name: Brian Peterson
Title: President

LIST OF EXHIBITS

| | |
|-----------|--------------------------------------|
| Exhibit A | Scope of Work |
| Exhibit B | Schedule of Values and Payment Terms |
| Exhibit C | Test Procedures |
| Exhibit D | [RESERVED] |
| Exhibit E | Project Site Plan |
| Exhibit F | Permits by Owner |
| Exhibit G | Insurance Coverage Limits |

EXHIBIT A

SCOPE OF WORK

Engineering, Procurement and Construction

The Scope of Work (“Work”) of this project includes the following items. Whether stated or not, the Work shall include, but is not limited to, all of the labor, materials, equipment, design services, construction services, and other services necessary to complete the tasks set forth below. The Work shall also include any additional services, supervision, testing, labor, supplies, materials, transportation, tools and other equipment and machinery which, although not expressly required by or listed in this EPC Contract, can be reasonably inferred as being necessary for the proper performance by the EPC Contractor of its obligations, whether completed or partially completed, hereunder in accordance with Prudent Wind Industry Practice.

General

- Provide qualified management to oversee the construction work at all times that work is progressing on the site. Notwithstanding the foregoing, provided that EPC Contractor is providing appropriate supervision at all times that construction workers are active on the site, the project manager and project superintendent may share duties on this project with projects of the EPC Contractor.
- Provide all labor for the construction.
- Provide field offices, storage containers, dumpsters, portable toilets and other temporary measures as required to execute the work.
- Provide equipment necessary for unloading and storage of any materials delivered to the project site.
- Provide red-line As-built drawings for the electrical work. Within thirty (30) days following the issuance of the Final Completion Certificate, EPC Contractor shall prepare and deliver to Owner, detailed as-built plans accurately depicting the Project including, without limitation, all underground structures if in the scope of the project.
- If needed, provide all design and construction control affidavits related to the electrical engineering.
- Provide all costs of all insurances specified in Exhibit G.

Design / Build Specifications

- Prepare or engage such experienced, licensed and suitable subcontractors to prepare final Design/Build Specifications required for the completion of the Work including any electric and mechanical drawings and specifications.
- Submit all such Design/Build Specifications to the Owner for its review, approval and acceptance in accordance with the terms of this EPC Contract.

Civil/Sitework

- Not applicable.

Foundation Work

- Not applicable

Erection Work

- Not applicable

Electrical Work

- Perform all electrical work in accordance with the electrical drawings prepared in accordance with this EPC Contract.
- Provide all grounding.
- Furnish and install all electrical and communications conduit.
- Furnish and install all electrical and communications cable from the Solar System to the transformer and to the switchgear and from there to the interconnection with the grid.
- Perform all terminations and voltage testing required.
- Furnish and Install pad mounted Transformer if required by design.
- Additional equipment to be included as required equipment by Interconnecting Utility as a condition to interconnection of the Solar System on the Host Site side of the meter.

Commissioning Work

- Perform preliminary start-up operation of the Project and all of its respective component systems and equipment prior to performance testing, to determine and establish the operability of those systems and equipment.
- Perform, in conjunction with the manufacturer, commissioning of the Solar System with the Test Procedures and the procedures.
- Perform utility witness testing as required by Interconnecting Utility.

EXHIBIT B

SCHEDULE OF VALUES AND PAYMENT TERMS

Schedule of Values

\$5,088,004.00

Projected Progress Payment Schedule

| | | |
|-------|---|------|
| 1. | Deposit within 14 days of contract execution | 10% |
| 2. | Progress payment for permit award | 15% |
| 3. | Progress payment for PV modules and inverters delivered | 25% |
| 4. | Progress payment upon completion of Roofing | 20% |
| 5. | Progress payment for electrical completion | 20% |
| 6. | Final payment upon acceptance of system by Owner | 10% |
| TOTAL | | 100% |

Payment Terms

(a) As soon as practicable after the receipt of the Construction Notice to Proceed, the EPC Contractor shall submit an application for Progress Payment (“Application for Progress Payment”), applying for payment in accordance with the Projected Progress Payment Schedule above. The net due to EPC Contractor from such application shall be paid within thirty (30) days of the date submitted, so long as approved consistent with the terms of this EPC Contract. On or before the twenty-fifth day of each calendar month (but not more than once a month), the EPC Contractor shall prepare and submit to Owner and the Owner’s Engineer an Application for Progress Payment certified by an authorized officer of the EPC Contractor, which shall set forth the following:

- (i) Cumulatively through the end of the billing period those portions of the Work completed and the expenses incurred or accrued, which EPC Contractor projects will be substantially as set forth on the Projected Progress Payment Schedule set forth above, and which have been accomplished since the prior Application for Progress Payment;
- (ii) The aggregate amount previously paid by Owner to the EPC Contractor in partial payment of the Contract Price;
- (iii) The amount of Progress Payment then due and payable (the “Progress Payment”) which has not been previously paid by Owner;
- (iv) Sufficient supporting detail for the Application for Progress Payment, which detail shall include copies of all invoices to be paid by EPC Contractor upon receipt of the Progress Payment and all invoices paid by EPC Contractor for which EPC Contractor is seeking reimbursement through the Application for Progress Payment; and
- (v) A description of any known or anticipated changes in the schedule or Projected Cost of Work which could affect (v) the achievement of the Scheduled Completion Date,

(w) the Schedule of Values, (x) Projected Progress Payment Schedule, (y) the use of the Contingency, or (z) the Guaranteed Maximum Price.

(b) Unless Owner, within ten (10) days after receipt of an Application for Progress Payment, shall indicate in writing to the EPC Contractor its reasons for refusing to approve all or any portion of such Progress Payment, Owner shall pay to the EPC Contractor within fifteen (15) days after the beginning of the month following the month in which the Application for Progress Payment was received, the amount of the Progress Payment specified therein, minus a ten percent (10%) retainage until the Work is complete. If Owner shall dispute all or any portion of the Application for Progress Payment, the amount of Progress Payment that is not in dispute, less any applicable retainage, shall be paid in accordance with Application for Progress Payment. Owner, or the Owner's Engineer shall have the right to request reasonable additional supporting documentation or further explanation of, and to dispute any matter set forth in, such Application for Progress Payment, and payment of such Progress Payment shall not be deemed a waiver of such rights of Owner. If the EPC Contractor shall submit a revised Application for Progress Payment in response to Owner's refusal to approve an original Application for Progress Payment, the procedures of this paragraph shall recommence.

(c) Within fifteen (15) days of the Substantial Completion Date, EPC Contractor may apply for payment of the balance of any cumulative retainage from paragraph (b) above and Owner shall pay the EPC Contractor, from the cumulative retainage in paragraph (b) above, any previously unpaid amount provided, however, Owner shall be entitled to continue to retain an amount equal to 150% of the cost of completing the unfinished portion of the Work specified in the punch list. Such unpaid amount, as it may change from time to time, is the "Final Retainage." Such payment shall be made pursuant to the terms and conditions set forth below and provided that the EPC Contractor shall have submitted to Owner and the Owner's Engineer, on or before the Substantial Completion Date:

- (i) An affidavit that all payables, invoices of direct subcontractors, invoices of indirect subcontractors (i.e., sub-subcontractors) to the best of the EPC Contractor's knowledge, invoices for materials and equipment and other amounts incurred by the EPC Contractor and connected with the Work for which Owner, the EPC Contractor, the Project, or the Project Site might in any way be responsible (including applicable sales tax) have been paid or otherwise satisfied or provided for by a bond satisfactory to Owner;
- (ii) Such receipts, releases and conditional waivers of liens in such form and from such persons as may be requested by Owner in order to establish the payment or discharge by the EPC Contractor of its obligations hereunder or to third parties in connection with the performance and completion of the Work; provided, that if any such person shall refuse to furnish a receipt, release or waiver required by Owner, the EPC Contractor shall furnish a bond satisfactory to Owner to indemnify Owner against such lien; and further provided, that if any such lien remains unsatisfied after all payments are made, the EPC Contractor shall refund promptly to Owner on behalf of Owner after the Substantial Completion Date all monies that Owner may be compelled to pay in discharging such lien, including all costs, attorneys' fees, expenses, and interest; and
- (iii) A certificate of the EPC Contractor that the EPC Contractor is not in default hereunder, and that no event exists, which with the passage of time or the giving of notice or both, would constitute an Event of Default.

(d) Amounts from the Final Retainage shall be disbursed by Owner to the EPC Contractor in accordance with the provisions of this paragraph (d). On or about the 25th day of the calendar month

following the month the payment specified in paragraph (c) above has occurred, the EPC Contractor shall prepare and submit to Owner and the Owner's Engineer an application, certified by the EPC Contractor, for payment from the Final Retainage an amount equal to the additional costs and expenses then incurred or accrued by the EPC Contractor in detail and in the manner of an Application for Progress Payment. Unless Owner, within ten (10) days after receipt of such application, shall indicate in writing to the EPC Contractor its reasons for refusing to approve such application, Owner shall pay to the EPC Contractor within fifteen (15) days after the beginning of the month following receipt of such application the amount from the Final Retainage requested therein, provided, however, Owner shall not be required to pay any amount which would reduce the then Final Retainage below the amount of the term as defined in paragraph (c) above.

(e) Within fifteen (15) days after the Final Acceptance Date, Owner shall pay the EPC Contractor from the Final Retainage the unpaid balance of the Contract Price, provided the EPC Contractor shall have submitted to Owner hereunder and the Owner's Engineer, on or before the Final Acceptance Date:

- (i) An affidavit that all payrolls, invoices of direct subcontractors, invoices of indirect subcontractors to the best of the EPC Contractor's knowledge, invoices for materials and equipment and other amounts incurred by the EPC Contractor and connected with the Work for which Owner, EPC Contractor, the Project, or the Project Site or any interest therein or component thereof might in any way be responsible for or subject to (including applicable sales tax) have been paid or otherwise satisfied or provided for by a bond satisfactory to Owner; and
- (ii) Such receipts, releases and waivers of liens in such form and from such persons as may reasonably be requested by Owner in order to establish the payment or discharge by the EPC Contractor of its obligations hereunder or to third parties in connection with the performance and completion of the Work; provided, that if any such person shall refuse to furnish a receipt, release or waiver required by Owner, the EPC Contractor shall furnish a bond satisfactory to Owner to indemnify Owner against any lien; and provided further, that if any such lien remains unsatisfied after all payments are made, the EPC Contractor shall refund promptly to Owner after the Final Acceptance Date all monies that Owner may be compelled to pay in discharging such lien, including all costs, attorneys' fees, expenses, and interest.

EXHIBIT C

System Performance Test Procedure

The EPC Contractor shall perform the System Performance Test to achieve Substantial Completion.

The EPC Contractor shall provide advanced notice to Company so that Company has the option of having a representative present during testing.

Measurements will be made during clear and stable sky conditions. This test will be conducted under full sun ($>400 \text{ W-m}^{-2}$), generally between the hours of 10:00 a.m. and 2:00 p.m. If such conditions are not available at the scheduled time, then the test will be rescheduled within five (5) business days. If upon the expiration of the foregoing period such conditions are still not available, then the test will be conducted under stable sky conditions with a minimum irradiance of 200 W/m^2 . The Company shall have the option to cause the EPC Contractor to conduct any such test on the original date therefore regardless of the sky conditions on such date.

Before commencing any system checking and testing, EPC Contractor will ensure the following:

- Non-current carrying metal parts (such as array frames, metal boxes, etc.) are grounded properly;
- All labels and safety signs specified in the plans are in place; and
- All disconnect switches (from the main AC disconnect all the way through to the combiner fuse switches) are in the open position and have a tag on each box with a warning sign to signify that work on the PV system is in progress.

The System Performance Test shall be as follows:

- (i) The System will be turned on and allowed to run for one (1) hour before taking any performance measurements.
- (ii) Record the Measured Solar Irradiance measured by each of the irradiance meters included with the Component Part.
- (iii) Obtain the Average Solar Irradiance by averaging the Measured Solar Irradiance measurements.
- (iv) Record the AC Power output from the inverter(s) ($\text{Watts}_{AC \text{ INVERTER}}$).
- (v) Record the AC Power output at the Revenue Meter ($\text{Watts}_{AC \text{ MEASURED}}$).
- (vi) Calculate the Performance Ratio according to the following formula:

$$PR = \text{Watts}_{AC \text{ MEASURED}} / \text{Facility Nameplate DC Power Rating} \times \text{Average Solar Irradiance} / 1000 \times \text{Temperature Correction}$$

Where:

The Facility Nameplate DC Power Rating is defined as the nominal STC power rating of the PV modules as indicated on the manufacturers' published data sheets multiplied by the total number of modules utilized in the Facility.

Temperature Correction = $1 + (\text{Module Temperature} - 25) \times \text{Temperature Coefficient of Power}$

Temperature Coefficient of Power = the module manufacturer's published value for the model of PV module installed at the Facility.

- (vii) The Minimum Performance Ratio shall be equal to 0.84.
- (viii) The System Acceptance Evaluation is successful once the Measured Performance Ratio is higher than the Minimum Performance Ratio.

EXHIBIT D

[RESERVED]

EXHIBIT E

PROJECT SITE PLAN

(Separately Attached)

EXHIBIT F

OWNER PERMITS
Land Use Permits

EXHIBIT G

INSURANCE COVERAGE LIMITS

Public Liability and Property Damage Insurance. During the Term, EPC Contractor at its cost shall maintain commercial general liability insurance on the Premises that is written on an occurrence basis insuring against all liability for personal injury and property damage arising out of and in connection with the Work, in standard form with a general aggregate limit of not less than \$5,000,000, a products-completed operations aggregate limit of not less than \$2,000,000, and a per occurrence limit of not less than \$2,000,000 for bodily injury and property damage.

Workers' Compensation Insurance. During the Term, EPC Contractor shall at its cost maintain Workers' Compensation Insurance, subject to the statutory limits of the State of California, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 per disease policy limit in respect of EPC Contractor's employees.