

POWER PURCHASE AGREEMENT FOR A SOLAR PHOTOVOLTAIC SYSTEM

THIS POWER PURCHASE AGREEMENT for the construction, operation, and maintenance of a Solar Photovoltaic System ("Solar PY System") is entered into by and between the Commonwealth of Pennsylvania, Department of Corrections ("Commonwealth" or "DOC"), with its central office located at 1920 Technology Parkway, Mechanicsburg, PA 17050 and _____ ("Contractor" or "Co-Locator"), with offices located at _____ (each a "Party" and collectively, the "Parties").

WHEREAS, the Commonwealth of Pennsylvania, Department of General Services issued a Request For Proposals for the Solar Photovoltaic System, RFP No. _____ ("RFP"), which is attached hereto as Exhibit "A;" and

WHEREAS, Contractor submitted a proposal in response to the RFP; and

WHEREAS, Contractor's proposal was selected for the Best and Final Offer ("BAFO") phase of the RFP process; and

WHEREAS, in response to the BAFO request, Contractor submitted a BAFO Cost Submittal; and

WHEREAS, DGS determined that Contractor's proposal, as revised by its BAFO Cost Submittal, was the most advantageous after taking into consideration all of the evaluation factors set forth in the RFP and selected Contractor for contract negotiations; and

WHEREAS, DOC and Contractor have negotiated the Contract as their final and entire agreement in regard to providing a Solar Photovoltaic System.

NOW THEREFORE, intending to be legally bound hereby, DOC and Contractor agree as follows:

1. All of the foregoing recitals shall be and hereby are incorporated by reference into the Contract.
2. The agreement between the Parties governing all aspects of the construction and operation of the Solar PY System and the sale of electricity from the Solar PY System to DOC is comprised of the following documents, which are listed in order of highest to lowest precedence in the event of a conflict between these documents:
 - a. This Power Purchase Agreement.
 - b. The RFP which is attached hereto at Exhibit "A."

- c. The Contractor's BAFO Cost Submittal, which is attached hereto as Exhibit "B."
 - d. The Contractor's Small Diverse Business Submittal, which is attached hereto as Exhibit "C."
 - e. The Contractor's Veteran Business Enterprise Submittal, which is attached hereto as Exhibit "D."
 - f. Parts _____ of the RFP, including all referenced Appendices and as revised by all Addenda issued thereto, including DOC's official responses to contractors' questions, all of which are attached hereto as Exhibit "A."
 - g. The Contractor's Technical Submittal which is attached hereto as Exhibit "E."
3. **Definitions.** The following words and phrases shall be defined as follows:
- a. "Applicable Law" means, with respect to any Person, any provision of the Constitutions of the United States or the Commonwealth of Pennsylvania, law, statute, rule, regulation, ordinance, treaty, order, decree, tariff, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
 - b. "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Law or; (ii) the imposition of any material conditions on the issuance or renewal of any Governmental Approval after the Effective Date of the Contract (notwithstanding the general requirements contained in any applicable Governmental Approval at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the Solar PV System, or other performance of the Contractor's obligations hereunder and which has a material adverse effect on Contractor's ability to perform its obligations hereunder, or has a material adverse effect on the cost to Contractor of performing such obligations.
 - c. "Contractor Default" means the occurrence of any of the events set forth in this PPA.

- d. "DOC Default" means the occurrence of any of the events set forth in this PPA.
- e. "EA Sale Notice" has the meaning set forth in Paragraph 13 of this PPA.
- f. "Environmental Attributes" means, an aspect, claim, characteristic or benefit associated with the generation of electricity by the Solar PV System that is capable of being measured, verified or calculated, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of electricity by the Solar PV System and its displacement of conventional, non-renewable electricity generation together with the right(s) to report ownership of such attributes to any agency, authority, or third party. Environmental Attributes shall not include (i) any energy, capacity, reliability or other power attributes from the system; (ii) Tax Credits associated with the construction or operation of the system and other financial incentives in the form of credits, reductions or allowances associated with the Solar PV System that are applicable to a state, provincial or federal income taxation obligation; or (iii) fuel-related subsidies, "tipping fees", or other local subsidies received by the Solar PV System for the destruction of particular preexisting pollutants or the promotion of local environmental benefits. Environmental Attributes specifically includes Renewable Energy Credits issued by any Governmental Authority.
- g. "Environmental Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to generation of electricity, the use of technology incorporated into the Solar PV System, environmental benefits of using the Solar PV System, or other similar programs available from the local electric utility, any other regulated entity, the manufacturer of any part of the Solar PV System or any Governmental Authority, in each case, resulting from the construction or ownership of, or the production of electricity from, the Solar PV System; provided, however, that Environmental Incentives shall not include Environmental Attributes.
- h. "Financing Party or Parties" means Person or Persons directly or indirectly providing capital, or construction or permanent financing (including lenders or tax investors or similar investors) to Contractor in connection with construction, ownership, operation and maintenance of the Solar PV System, equity investors in Contractor, or if applicable, means any Person to whom Contractor has transferred the ownership interest in the Solar PV System, subject to a leaseback of the Solar PV System from such Person.
- i. "Good Utility Practice" means any of the applicable practices, methods and acts: (i) required by the Pennsylvania Public Utility Commission, the Federal Energy Regulatory Commission, and the PJM Interconnection

LLC, or the successor of any of them, whether or not the party whose conduct is at issue is a member thereof; (ii) required by Applicable Law or regulation; or (iii) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, methods or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the region.

- j. "Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.
- k. "Governmental Authority" means any federal, state, regional, county, town, city, or municipal government or quasi-governmental body or authority, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such entity, including, but not limited to the Federal Energy Regulatory Commission, PJM Interconnection, and the Pennsylvania Public Utility Commission.
- l. "Hazardous Substances" means collectively (i) any hazardous or toxic substance, material or waste (except for legally permissible concentrations thereof), including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; (ii) such substances, materials or wastes as are regulated by the Resource Conservation and Recovery Act of 1976 42 U.S.C. §6901 et seq., the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., the Clean Water Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., and all amendments to any of the foregoing laws; and (iii) such toxic or hazardous substances, materials or wastes that are or may become regulated under any other Applicable Law.
- m. "Liens" means any mortgage, pledge, lien (including mechanics'; labor or materialman's lien), charge, security interest, encumbrance or claim of any nature.
- n. "Monetary Default" means a default resulting from the failure of a Party to pay any amount due and payable under the Contract.

- o. "NAE Notice" has the meaning set forth in Paragraph 29 of this PPA.
 - p. "Non-Appropriation Event" has the meaning set forth in Paragraph 29 of this PPA.
 - q. "Non-Monetary Default" means any default other than a Monetary Default.
 - r. "Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
 - s. "Tax Credits" means any and all (a) investment tax credits, (b) production tax credits, and (c) similar tax credits or grants under Applicable Law relating to the construction or ownership of, or production of electricity from, the System.
4. **Contract Term.** The term of this Contract shall commence upon the date of final execution of this PPA (the "Term Commencement Date") and shall terminate on the fifteenth (15th) anniversary of the Term Commencement Date (the "Term Completion Date") unless otherwise terminated as provided herein. Upon the Term Completion Date, this Contract shall automatically renew for an additional five (5) year renewal term (the "Renewal Term") so long as the Contractor is in compliance with the Law, applicable regulations, the terms of this PPA, or the permits necessary for the continued operation of the Solar PV System have not been obtained. This PPA shall automatically be extended for the Renewal Term unless the Contractor notifies DOC of its intention not to renew at least one hundred eighty (180) days prior to commencement of the Renewal Term or it is determined, at the sole discretion of DOC, that the Contractor is not in compliance with the Law, applicable regulations, the terms of the PPA or the necessary permits for the continued operation of the Solar PV System have not been obtained. Upon expiration of the Renewal Term, at the sole discretion of DOC, the Contract may be extended for a final five (5) year term.
5. **Solar PV System.** Contractor shall, upon receipt of a fully-executed Contract and in accordance with the terms and conditions of the Contract, design and build the Solar PV System, on property provided to the Contractor by DOC ("Property") under the terms and conditions of the Site Occupancy Agreement attached hereto as Exhibit "E." The design and build of the Solar PV System shall be done in accordance with the requirements of the RFP and this PPA.
6. **Minimum Functional Specification.** The Contractor and DOC shall agree to a Minimum Functional Specification outlining the anticipated and

minimum output of electricity generated by the Solar PV System for the duration of the Contract Term. The Minimum Functional Specification is attached hereto at Exhibit "F." In accordance with Paragraph 22 of this PPA, the failure of the Solar PV System to achieve the minimum output of electricity identified in the Minimum Functional Specification may be considered a default of this PPA.

7. **Payment of Prevailing Minimum Wages.** Contractor and Contractor's contractor(s) must comply with the following conditions, provisions, and requirements in the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System:
 - a. Contractor and Contractor's contractor(s) shall pay at least the wage rates as determined by the Secretary of the Pennsylvania Department of Labor and Industry and shall comply with the conditions of the Prevailing Wage Act of August 15, 1961, 43 P.S. § 165-1 et seq., and the regulations issued thereto, to assure the full and proper payment of the rates.
 - b. Workers in the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System shall be paid at least the general prevailing minimum wage rates as set forth in the prevailing minimum wage predetermination, issued by the Secretary of Labor and Industry.
 - c. These requirements apply to work performed in the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System by Contractor, Contractor's contractor(s) and all subcontractors.
 - d. Contractor shall insert in all its contracts for the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System and shall require the contractor(s) to insert in each of its subcontracts the stipulations contained in these provisions.
 - e. No workers may be employed in the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System except in accordance with the classifications in the prevailing minimum wage predetermination of the Secretary. If additional or different classifications are necessary, Contractor shall request the Department of General Services to petition the Secretary of Labor and Industry for rates for additional or different classifications.

- f. Workers employed or working in the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System shall be paid unconditionally, regardless of whether a contractual relationship exists or the nature of a contractual relationship which may be alleged to exist between a contractor, subcontractor and worker, at least once a week, without deduction or rebate, on any account, either directly or indirectly except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this PPA, the RFP, the Prevailing Wage Act or the regulations promulgated pursuant to the Act prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to a worker on a public work.

- g. Contractor shall require its contractor(s) and each subcontractor to post for the entire period of the construction of the Solar PV System, substantial rehabilitation of the Solar PV System and/or substantial alterations to the Solar PV System the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the places used by them to pay workers their wages. The posted notice of wage rates shall contain the following information:
 - i. The name of project.

 - ii. The name of the “Department of Corrections.”

 - iii. The crafts and classifications of workers listed in the Secretary’s general prevailing minimum wage rate determination for the particular project.

 - iv. The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.

 - v. A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or this title, they may file a protest in writing with the Secretary of Labor and Industry within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A worker paid less than the rate specified in the contract shall have a civil right to action for the difference between the wage paid and the wages stipulated in the contract, which right of action shall be exercised within 6 months from the occurrence of the event creating the right.

- h. Contractor shall require its contractor(s) and each subcontractor to keep an accurate record showing the name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employee benefits, to each worker employed by him in connection with the public work. The record shall include deductions from each worker. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the Department of General Services and the Department of Labor and Industry.
 - i. Apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by The Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with The Apprenticeship and Training Act (43 P.S. §§ 90.1-90.10), approved July 14, 1961, and the regulations issued thereto shall be employed on the public work project. A worker using the tools of a craft who does not qualify as an apprentice within this Paragraph shall be paid the rate predetermined for journeymen in that particular craft or classification.
 - j. Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary of Labor and Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.
 - k. Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Prevailing Wage Act and this PPA, regardless of the average hourly earnings resulting therefrom.
 - l. Contractor shall require its contractor(s) and each subcontractor to file a statement each week and a final statement at the conclusion of the work on the contract under oath, and in form satisfactory to the Secretary, certifying that workers have been paid wages in strict conformity with the provisions of the contract as prescribed by this provision or if wages remain unpaid to set forth the amount of wages due and owing to each worker respectively.
 - m. The provisions of the Prevailing Wage Act (43 P.S. §§ 165-1 through 165-17) and the regulations issued thereto (34 Pa. Code §§ 9.101 through 9.112) are incorporated by reference in the PPA.
8. **Sale of Electricity.** Contractor agrees to sell, and DOC agrees to purchase, all of the electricity generated by the Solar PV System during

the Term at the rate specified in the Contractor's BAFO Cost Submittal, and subject to the terms of the Contractor's BAFO Cost Submittal. Electricity generated by the Solar PV System will be delivered to DOC at the delivery point identified in the RFP (the "Delivery Point") in the form of alternating current. DOC shall be obligated to purchase all of the electricity generated by the Solar PV System, regardless of its electrical demand or any other factor. DOC shall take title to the electricity generated by the Solar PV System at the Delivery Point, and risk of loss will pass from Contractor to DOC at the Delivery Point. Any purchase, sale and/or delivery of electricity generated by the Solar PV System prior to the Initial Energy Delivery Date shall be treated as purchase, sale and/or delivery of limited amounts of test electricity only and shall not indicate that the Solar PV System has been put in commercial operation by the purchase, sale and/or delivery of such test electricity.

9. Invoicing and Payment

- a. Except as set forth in subparagraph (b) below, the Contractor shall invoice DOC and shall be paid in accordance with the RFP. The DOC shall pay the Contractor the prices set forth in Contractor's BAFO Cost Submittal.
- b. If a bona fide dispute arises with respect to any invoice, DOC shall not be deemed in default under the Contract and the Parties shall not suspend the performance of their respective obligations hereunder, provided that DOC shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties in accordance with the RFP.

10. Small Diverse Business and Veteran Business Enterprise

Participation Submittals. Contractor agrees to meet and maintain the commitments to Small Diverse Businesses and Veteran Business Enterprises made in its Small Diverse Business Submittal attached hereto at Exhibit "C" and its Veteran Business Enterprise Submittal attached hereto at Exhibit "D." Any proposed change to a Small Diverse Business or Veteran Business Enterprise commitment must be submitted to the DGS Bureau of Diversity Inclusion and Small Business Opportunities ("BDISBO"), which will make a recommendation as to a course of action to the Contracting Officer. Contractor shall complete the Prime Contractor's Monthly Utilization Report in the format required by BDISBO and submit it to the Contracting Officer and BDISBO within ten (10) workdays after the end of each calendar month that the Contract is in effect.

- 11. Access Rights.** The Contractor shall have access to the land designated for this Solar PV System (the "Land") in accordance with the terms of the Site Occupancy Agreement attached hereto at Exhibit "E."

12. **Planning, Installation and Operation of Solar PV System.** Except as set forth in each of the subparagraphs below, the Contractor shall construct, operate and maintain the Solar PV System in accordance with the requirements of the RFP and the Contractor's Technical Submittal.
- a. Upon full execution of the Contract, DOC will provide a copy of the fully executed Contract and issue to the Contractor a written Notice to Proceed which shall formally notify the Contractor that it may begin performance under the Contract.
 - b. Contractor may, at its election, install a utility grade kilowatt hour meter for the measurement of electivity provided by the Solar PV System.
 - c. In constructing, operating, and maintaining the Solar PV System pursuant to the requirements of the RFP and the Contractor's Technical Submittal, the adequacy of Contractor's performance shall be measured against Good Utility Practice. Any actions taken by Contractor in constructing, operating, and maintaining the Solar PV System that are consistent with Good Utility Practice shall not be considered a breach of the requirements of the RFP or the Contractor's Technical Submittal.
 - d. The work plans required by the RFP shall only be required during the construction of the Solar PV System.
 - e. Contractor shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the Solar PV System by anyone other than Contractor or its contractors. If the Solar PV System requires repairs for which the DOC is responsible, the DOC shall pay Contractor for diagnosing and correcting the problem at the Contractor's (or its contractors') then current standard rates, plus the costs of any materials or subcontracted labor or services.
 - f. Contractor shall be entitled to suspend delivery of electricity from the Solar PV System to the Delivery Point for the purpose of maintaining and repairing the Solar PV System, and such suspension of service shall not constitute a breach of this Contract; provided, that Contractor shall use commercially reasonable efforts to minimize any interruption in service to the DOC, and DOC is given at least two (2) weeks written notice of the suspension of delivery (except in the event of an emergency or otherwise unplanned repair).

- g. If DOC determines that there is a need to disconnect the Solar PV System as permitted by the RFP, DOC shall, before disconnecting the Solar PV System, provide Contractor with 48 hours written notice of its intent to disconnect the Solar PV System and the reasons therefor, and immediately make its Project Coordinator available for a meeting with the Contractor or its representatives to attempt in good faith to resolve the issue. This obligation will not apply when a delay of 48 hours is reasonably likely to cause injury or property damage.
- h. If scheduled or unscheduled outages by DOC pursuant to the RFP exceed five (5) calendar days per year, for reasons other than Force Majeure events or other emergency conditions, Contractor shall reasonably estimate the amount of electricity that would have been delivered to DOC during such outages and shall invoice DOC for such amount in accordance with this PPA.
- i. Each Party shall promptly notify the other if it becomes aware of (i) any threat to, damage to or loss of the use of the Solar PV System that could reasonably be expected to adversely affect the Solar PV System; and (ii) any event or circumstance that poses an imminent risk to human health, the environment, the Solar PV System or the Land.
- j. Any changes to the Contractor's Technical Submittal that can clearly be construed to be within the scope of the Contract shall be agreed upon by the Parties and will be documented in writing through a Change Notice issued by the DOC Project Manager.
- k. At the request of Contractor, and at the Contractor's expense, DOC shall provide the Contractor with access to electricity and other utility services as are available to the DOC at the Land for the purposes of installing the Solar PV System. Such obligation shall terminate on the Initial Energy Delivery Date.

13. Conditions to Contractor's Obligations

- a. In the event that, prior to commencement of construction of the Solar PV System, any of the following events or circumstances occur, or any other events or circumstances occur that affect the Contractor's ability to perform under this Contract in compliance with Applicable Law or in a manner that provides the Contractor a reasonable return on its investment in the Solar PV System, the Parties shall meet to discuss the events or circumstances and use best efforts to reach agreement on amendments to the Contract that will allow the Contractor to perform under the Contract in compliance with Applicable Laws, and to preserve the economic value of the Contract for both Parties. In the event that the Parties cannot reach agreement on amendments to the Contract, the Contractor may, upon ten

- (10) Business Days written notice to DOC, terminate the Contract, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination.
- i. There is a Change in Law that could reasonably be expected to adversely affect the economics of the Solar PV System for Contractor and its Financing Parties;
 - ii. Contractor is unable to obtain financing for the Solar PV System on satisfactory terms and conditions;
 - iii. Contractor and/or DOC have not (i) entered into a valid interconnection agreement with the local electric utility, and (ii) received an interconnection study acceptable to Contractor in its sole discretion that confirms that the Solar PV System can be connected to the local electric utility's distribution network at a cost that does not make the Solar PV System economically unattractive for Contractor, in each case in time to meet any deadlines required for Contractor to obtain Environmental Incentives, Environmental Attributes and Tax Credits satisfactory to Contractor;
 - iv. Contractor has not received adequate confirmation, in its sole discretion, that it will obtain all applicable Environmental Incentives, Environmental Attributes and Tax Credits in amounts and on schedules satisfactory to Contractor;
 - v. Contractor has not received all Governmental Approvals necessary for construction of the Solar PV System in time to meet any deadlines required for Environmental Incentives, Environmental Attributes and Tax Credits satisfactory to Contractor; or
 - vi. Contractor has not received confirmation that the Solar PV System will be eligible for net metering.
- b. In the event that any of the following events or circumstances occur prior to commencement of construction of the Solar PV System, the Parties shall meet to discuss the events or circumstances and use best efforts to reach agreement on amendments to the Contract that will allow the Contractor to perform under the Contract in compliance with Applicable Laws, and to preserve the economic value of the Contract for both Parties. In the event that the Parties cannot reach agreement on amendments to the Contract, the Contractor and DOC may agree to terminate the Contract, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination.

- i. Contractor has identified adverse claims, restrictions or other conditions (including easements or other liens) on the Commonwealth's title to the Land, or there has been a material adverse change in the rights of the Commonwealth and/or Contractor to construct, own, and operate the Solar PV System on the Land; or
 - ii. There exist site conditions (including geotechnical or environmental conditions) or construction requirements that were not known to Contractor as of the Effective Date and that could reasonably be expected to materially increase the cost of the construction or operation of the Solar PV System, or would adversely affect the electricity production from the Solar PV System as designed.
- 14. **Environmental Attributes, Environmental Incentives, and Tax Credits.** The Contractor shall be the owner of all of the Environmental Attributes, Environmental Incentives, and Tax Credits generated by the operation of the Solar PV System, and may sell, assign or transfer such Environmental Attributes, Environmental Incentives and Tax Credits in its sole discretion. Notwithstanding the foregoing, prior to selling any Environmental Attributes to any third party, Contractor shall provide DOC with notice of its intent to sell such Environmental Attributes ("EA Sale Notice"), which notice shall identify the terms upon which Contractor intends to make such sale. DOC shall then have 14 calendar days to provide written notice to Contractor that it agrees to purchase such Environmental Attributes on the same terms identified in the EA Sale Notice. If Contractor does not receive written notice of DOC's intent to purchase such Environmental Attributes within 14 calendar days of its submittal to DOC of the EA Sale Notice, Contractor shall be free to sell such Environmental Attributes to any third parties. The DOC shall cooperate with Contractor in obtaining, securing and transferring all Environmental Incentives, Environmental Attributes and the benefit of all Tax Credits to Contractor, including by using the electricity generated by the Solar PV System in a manner necessary to qualify for such available Environmental Incentives, Environmental Attributes, and Tax Credits.
- 15. **Permits.** All Governmental Approvals are the responsibility of the Contractor pursuant to the RFP. To the extent that only DOC is authorized to request, obtain or issue any necessary Governmental Approvals, DOC shall reasonably cooperate with Contractor, at Contractor's request, to obtain such Governmental Approvals.
- 16. **Ownership of the Solar PV System.** The Solar PV System shall remain the property of the Contractor at all times (unless DOC exercises its purchase option under the Contract), and shall not attach to, or be deemed a part of, or fixture to, the Land. The Solar PV System shall at all

times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

17. Site Occupancy Agreement.

- a. The Parties shall execute a Site Occupancy Agreement granting Contractor the right to construct the Solar PV System on the Land.
- b. In accordance with the terms of the Site Occupancy Agreement, DOC will not interfere with or handle any Contractor equipment or the Solar PV System without written authorization from Contractor; and DOC will not conduct activities on, in or about the Land that have a reasonable likelihood of causing damage, impairment or otherwise adversely affect the Solar PV System.

18. Liens. DOC shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the Solar PV System.

19. Representations and Warranties Relating to Contract Validity. In addition to any other representations and warranties contained in the Contract, each Party represents and warrants to the other that:

- a. It has the full right and authority to enter into, execute, deliver, and perform its obligations under the Contract;
- b. It has taken all requisite corporate, legal or other action to approve the execution, delivery, and performance of the Contract, and the execution, delivery and performance of the Contract does not violate any Applicable Law;
- c. The Contract constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- d. There is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein;
- e. Its execution and performance of the Contract and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or, in the

case of Contractor, any of its Affiliates is a party or by which it or, in the case of Contractor, any of its Affiliates or its or their property is bound, or (ii) its organizational documents;

- f. It has obtained all Governmental Approvals required by any Governmental Authority or other third party necessary for such Party to execute and deliver the Contract; and such Party is in compliance with all Applicable Laws that relate to the Contract in all material respects;
- g. As to Contractor only, it is duly organized and validly existing and in good standing in the jurisdiction of its organization; and
- h. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, SHALL APPLY.

20. Additional Representations, Warranties, and Covenants of the DOC

- a. The DOC has reviewed all of the materials contained in Contractor's proposal submitted pursuant to the RFP (collectively, the "Contractor's Proposal") in their entirety, and has had the opportunity to seek clarifications on the Contractor's Proposal pursuant to the RFP. The DOC agrees that the Contractor's Proposal satisfies all of the requirements for submittal of a proposal contained in the RFP. Notwithstanding anything in the Contract to the contrary, the DOC hereby waives its right to terminate the Contract or otherwise commence any action or proceeding against Contractor due to or arising from the failure of the Contractor's Proposal to satisfy any requirement of the RFP.
- b. All information provided by DOC to Contractor as it pertains to usage and DOC's estimated electricity requirements is accurate in all material respects;
- c. DOC is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company;
- d. There are no protests or other actions or proceedings pending, or to the knowledge of DOC, threatened, by any third party resulting from or relating to the award of the Contract to the Contractor, or the DOC's process for awarding the Contract. Any protests filed regarding the procurement of the Solar PV System shall proceed in accordance with Section 1711.1 of the Commonwealth Procurement Code (62 Pa. C.S. § 1711.1).

- e. The DOC shall appoint a single representative as its Project Coordinator to function as the primary point of contact for the Contractor during the construction and operation of the Solar PV System.
21. **Change in Law.** If any Change in Law occurs, then the Parties shall, within thirty (30) days following receipt by DOC from Contractor of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to the Contract as are reasonably necessary to preserve the economic value of the Contract to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then the Contract shall be terminated without further liability to the DOC or the Contractor except with respect to payment of amounts accrued prior to termination.
22. **Default**
- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - i. Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - ii. Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - iii. Unsatisfactory performance of the work;
 - iv. Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - v. Improper delivery;
 - vi. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - vii. Delivery of a defective item;
 - viii. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;

- ix. Discontinuance of work without approval;
 - x. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - xi. Insolvency or bankruptcy;
 - xii. Assignment made for the benefit of creditors;
 - xiii. Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - xiv. Failure to protect, to repair, or to make good any damage or injury to property;
 - xv. Breach of any provision of the Contract;
 - xvi. Failure to comply with representations made in the Contractor's bid/proposal; or
 - xvii. Failure to comply with applicable industry standards, customs, and practice.
 - xviii. Failure of the Solar PV System to achieve the minimum output identified in the Minimum Functional Specification for a period of one (1) year.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase

Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

23. Force Majeure

- a. Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.
- b. The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the

Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

- c. In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

24. **Limitations of Liability.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THE CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE DAMAGES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE, EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE AS A RESULT OF A THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION IS OWED UNDER THE RFP, OR ARISE AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (TO THE EXTENT SUCH DAMAGES ARE AUTHORIZED AGAINST DOC UNDER APPLICABLE LAW). TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PARTIES AGREE THAT (1) IN THE EVENT THAT ANY TAX CREDITS CLAIMED OR RECEIVED BY CONTRACTOR (OR ITS TAX INVESTORS) WITH RESPECT TO THE SYSTEM ARE RECAPTURED, THE RECAPTURED AMOUNT SHALL BE DEEMED TO BE DIRECT AND NOT INDIRECT OR CONSEQUENTIAL DAMAGES, AND (2) IN THE EVENT THAT A BREACH OF THE CONTRACT CAUSES CONTRACTOR TO LOSE THE BENEFIT OF ANY ENVIRONMENTAL ATTRIBUTES OR ANY ENVIRONMENTAL INCENTIVES, THE AMOUNT OF SUCH ENVIRONMENTAL ATTRIBUTES OR ENVIRONMENTAL

INCENTIVES SHALL BE DIRECT AND NOT INDIRECT OR CONSEQUENTIAL DAMAGES.

25. **Early Termination by DOC.** DOC may terminate the Contract prior to any applicable Expiration Date for any reason upon sixty (60) days' prior written notice. In such event, DOC shall pay to Contractor, as liquidated damages, an amount equal to (i) the Early Termination Fee set forth in the RFP, and (ii) any and all other amounts previously owed to Contractor under this Agreement. If termination is for Contractor default, as set forth in this PPA, those provisions shall control.
26. **Assignability and Subcontracting**
- a. Contractor shall be permitted to use contractors and subcontractors to perform its obligations under the Contract, provided however, that such contractors and subcontractors shall be duly licensed, shall provide any work in accordance with applicable industry standards and shall comply with the Prevailing Minimum Wage requirements of this PPA. Notwithstanding the foregoing, Contractor shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
 - b. Contractor may assign the Contract to a third party with the prior written consent of the DOC, which consent shall not be unreasonably withheld or delayed if DOC has been provided with reasonable proof that the proposed assignee (1) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Solar PY System and providing services comparable to those contemplated by the Contract and (2) has the financial capability to maintain the Solar PY System and provide the services contemplated by the Contract in the manner required by the Contract.
 - c. Notwithstanding the foregoing, Contractor may, without the prior written consent of DOC, (1) assign, mortgage, pledge or otherwise collaterally assign its interests in the Contract and the Solar PY System to any Financing Party, (2) directly or indirectly assign the Contract and the Solar PY System to an Affiliate of Contractor, and (3) assign the Contract and the Solar PY System to any Person succeeding to all or substantially all of the assets of Contractor. In the event of any such assignment, the Contractor shall be released from all its liabilities and other obligations under the Contract provided that the assignee has assumed all of Contractor's liabilities and obligations hereunder. However, any assignment of Contractor's right and/or obligations under the Contract shall not result in any change to the DOC's rights and obligations under the Contract.

- d. Acknowledgment of Collateral Assignment. In the event that Contractor identifies a secured Financing Party in a notice to the DOC, then the DOC hereby: (i) acknowledges the collateral assignment by Contractor to the Financing Party, of Contractor's right, title and interest in, to and under the Contract; (ii) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Contractor's interests in the Contract within the timeframes specified herein with respect to Contractor; (iii) acknowledges that it has been advised that Contractor has granted a first priority perfected security interest in the Solar PV System to the Financing Party and that the Financing Party has relied upon the characterization of the Solar PV System as personal property, as agreed to in the Contract in accepting such security interest as collateral for its financing of the Solar PV System. Any Financing Party shall be an intended third-party beneficiary of this Paragraph.

27. End of Contract Term Purchase Option.

- a. At the expiration of the full term of the Contract (and not at any earlier termination due to a default, Non-Appropriation Event or otherwise), DOC shall have the option to purchase the Solar PV System at the then Fair Market Value of the system. If DOC wishes to exercise this option, it shall provide notice of its intent to the Contractor at least nine (9) months prior to the end of the Contract term.
- b. The Fair Market Value of the Solar PV System shall be determined by the mutual agreement of the Contractor and DOC; provided, however, if Contractor and DOC cannot mutually agree to a Fair Market Value before the date that is ninety (90) days before the end of the Contract, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar energy industry. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Solar PV System as a going concern on the Land and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- c. Upon Contractor's receipt of DOC's notice of its election to purchase the Solar PV System at the end of the Contract term, the Contractor shall prepare and deliver to DOC a set of records on the operation and maintenance history of the system, including a summary of known defects. Upon payment of the Fair Market Value purchase price, the Contractor shall deliver to DOC a Bill of Sale and the Parties shall execute such other documents necessary to convey the Solar PV System to DOC. Such bill shall not contain any warranties other than a warranty against any defects

in title arising through the Contractor. The Contractor shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the systems, or portions thereof, to DOC.

- d. If DOC does not exercise the option to purchase the Solar PV System at the end of the Contract term or the Contract is terminated for any reason other than the expiration of the term of the Contract, the Contractor, at its expense, shall promptly decommission and remove the Solar PV System. The Contractor shall not be required to remove any support structures for the system which are affixed to any DOC structures or any below grade structures, including foundations, conduits, or any roads, if applicable. DOC will provide the Contractor and its representatives reasonable vehicular and pedestrian access across the site for the purposes of decommissioning the System. DOC will grant the Contractor permission to store equipment and tools needed for the decommissioning of the Solar PV System for a period of one hundred eighty (180) days following the termination of the Contract for decommissioning and removal. Any parts of the Solar PV System or personal property of the Contractor still on the Land more than one hundred eighty (180) days following the end of the Contract shall be deemed abandoned and will become the property of DOC. During decommissioning, the Contractor shall comply with all applicable federal, state, and local laws and regulations.
- e. The Site Occupancy Agreement shall terminate upon the expiration of the Contract unless otherwise specified in writing by the Commonwealth.

28. Hazardous Substances

- a. In connection with the construction and operation of the Solar PY System, Contractor shall store, use, handle, and dispose of any Hazardous Substances in material compliance with all Environmental Laws. In the event the Contractor causes a release of any Hazardous Substances in quantities that require investigation or remediation under Environmental Laws, Contractor shall (a) promptly notify DOC of the location, type, and quantity of Hazardous Substances released, and (b) promptly take all measures required under Environmental Laws to remediate such release.
- b. In the event that a release of Hazardous Substances is discovered on the Land in quantities that require investigation or remediation under Environmental Laws, and such release was not caused by Contractor, DOC shall promptly take all measures required under Environmental Laws to remediate such release. In undertaking any such remediation, DOC shall coordinate with Contractor and otherwise use its best efforts to avoid and minimize, to the greatest extent reasonably practical under the circumstances, damage to the Solar PY System, and any disruption to Contractor's construction or operation of the Solar PY System.

29. **Miscellaneous**

- a. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of the Contract and which do not involve the assumptions of obligations other than those provided for in the Contract, to give full effect to the Contract and to carry out the intent of the Contract.
- b. **Limited Effect of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under the Contract at any time (other than with respect to and/or relating to the obligation to make any payment due under the Contract): provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of the Contract will be deemed to be a waiver. No exercise of any right or remedy under the Contract by DOC or Contractor shall constitute a waiver of any other right or remedy contained herein or provided by Applicable Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Contract shall not operate to limit or otherwise affect such rights or remedies.
- c. **Survival.** The obligations of the PPA, and all other provisions of the Contract that, by their sense and context, are intended to survive termination of the Contract shall survive the expiration or termination of the Contract for any reason.
- d. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under the Contract. If Contractor is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under the Contract in a manner that preserves their relative economic interests while

ensuring that Contractor does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Contractor shall have the right to terminate the Contract without further liability to DOC, except with respect to payment of amounts accrued prior to termination.

- e. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party: (i) that the Contract is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of the Contract and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- f. **Third-Party Beneficiaries.** Except as expressly provided herein to the contrary, the Contract is intended solely for the benefit of the Parties hereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party hereto.
- g. **Relationship to the Parties.** Nothing contained in the Contract shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between DOC and Contractor, or between either or both of them and any other Party. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other; provided, however, that, if necessary, Contractor shall be authorized to act as agent for DOC in connection with the negotiation of an interconnection agreement and net metering arrangements with the local electric utility.
- h. **Forward Contract; Service Contract.** The Parties acknowledge and agree that the Contract constitutes a "forward contract" within the meaning of the United States Bankruptcy Code. The payment of termination fees made or to be made by one Party to the other Party under the Contract constitute a "settlement payment" and/or a "transfer" under the United States Bankruptcy Code. The Contract constitutes a "master netting

agreement" and each party is a "master netting agreement participant" within the meaning of the United States Bankruptcy Code. The Parties intend the Contract to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. DOC will not take the position in any filing suggesting that it is anything other than a purchaser of electricity from the Solar PV System.

- i. **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Contractor and all required signatories of the Commonwealth.

30. **Non-Appropriation**

- a. DOC's obligation to make payments during any DOC fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. It is the present intention and expectation of the DOC that the Pennsylvania General Assembly, within the limits of available funds and revenues, will make an appropriation of a sufficient amount to fund DOC's operations. To the fullest extent permitted by Applicable Law, DOC hereby agrees that it shall use its best efforts to have funds properly budgeted, appropriated, allotted, or otherwise made available for the Contract (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner.
- b. If an appropriation is not made for DOC by the Pennsylvania General Assembly for any fiscal year during the Term of this PPA (a "Non-Appropriation Event"), DOC shall promptly give Contractor notice of such Non-Appropriation Event (the "NAE Notice"). The NAE Notice shall also serve as the notice of termination of this PPA and the Site Occupancy Agreement. A delay by the Pennsylvania General Assembly in the enactment of a budget (a "Budgetary Impasse") shall not constitute a Non-Appropriation Event. The occurrence of a Non-Appropriation Event shall not constitute Force Majeure under the Contract. Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of the NAE Notice, DOC will not jeopardize Contractor's sale, transfer or other monetization of Environmental Attributes, Environmental Incentives or Tax Credits.
- c. Upon receipt of the NAE Notice, Contractor shall have ninety (90) days to remove the Solar PV System from the Land and DOC shall pay to Contractor in accordance with the Early Termination Fee as set forth in this PPA. DOC shall undertake its best efforts to cause an appropriation to be made for the payment of the Early Termination Fee.

- d. In the event of a Budgetary Impasse that prevents DOC from timely payment, Contractor shall continue to operate the Solar PV System and deliver the electricity to DOC without timely payment by DOC until such time that a budget is enacted. Other than with respect to the obligation to make timely payment for electricity delivered, all obligations of DOC under the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, and intending to be legally bound hereby, DOC and Contractor have executed this Power Purchase Agreement on the day and year written below.

CONTRACTOR

By: _____

Title: _____

Date: _____

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS

By: _____
Office of Chief Counsel
Department of Corrections

By: _____
Secretary
Department of Corrections

Date: _____

Date: _____

APPROVED FOR FORM AND LEGALITY BY:

By: _____
Governor's Office of General Counsel

Date: _____