

PHILADELPHIA ENERGY AUTHORITY

**Standard Contract Terms**

These Standard Contract Terms are hereby incorporated in and made a part of the “Contract Award for “Bright Solar Futures” Training Program” (the “**Agreement**”) between Philadelphia Energy Authority (“**PEA**”) and [NAME] (“**Contractor**”).

**1. DEFINITIONS**

Capitalized terms used in this Exhibit have the meanings set forth below unless the context clearly indicates otherwise.

- a. **Agreement** is defined in the Preamble.
- b. **City** means the City of Philadelphia.
- c. **Contractor** is defined in the Preamble.
- d. **Customer** means any recipient of goods or services, including energy related services or training, under the Program.
- e. **Force Majeure Event** is defined in Section 8.a.
- f. **Party** means either PEA or Contractor.
- g. **PEA** is defined in the Preamble.
- h. **Work** means the responsibilities of the Contractor set forth in this Agreement.
- i. **Program** means the Bright Solar Futures program as described in the Agreement.

**2. PROGRAM PARTICIPANT PROTECTIONS.**

- a. **Privacy.** Any contact information supplied to Contractor as part of the Program may be used only for performing the Work in accordance with the Program and not for any other purposes. Contractor shall not share this contact information with any third party.
- b. **Photos.** Contractor will not use or publish any photos of PEA program participants without written consent from the participant. If the photo is of a participant that is under 18 years old, Contractor must have written consent of the participant’s parent or guardian in order to use or publish any photos of PEA program participants.

- c. Background clearances.** If Contractor will be working directly with minors to complete the Work, Contractor and its staff must comply with all child protection and privacy regulations applicable to working with minors including but not limited to submitting to child abuse background clearances, and state and federal criminal background checks.
- 3. MARKETING.** Contractor may only use PEA’s name and logos on marketing or advertising materials with prior approval from PEA.
- 4. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to PEA that:

  - a.** Contractor is duly organized, validly existing, and in good standing under the laws of the State in which it is incorporated, and is duly qualified and authorized to do business and is in good standing in all States where it is required to be qualified and authorized.
  - b.** Contractor has the legal power and authority to:

    - i. Transact the business in which Contractor is engaged and presently proposes to engage; and
    - ii. Execute, deliver, and perform the Agreement.
  - c.** Contractor has taken all necessary action to authorize the execution, delivery, and performance of the Agreement.
  - d.** Contractor has duly executed and delivered the Agreement.
  - e.** The execution, delivery, and performance of the Agreement does not:

    - i. Contravene any applicable provision of any law, statute, rule, or regulation, or any order, writ, injunction, or decree of any court or governmental entity,
    - ii. Conflict with or result in any breach of any agreement to which Contractor is a party,
    - or
    - iii. Violate any provision of any organizational documents of Contractor.
  - f.** No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Contractor of the Agreement, other than those that have already been obtained.
  - g.** When executed and delivered, the Agreement shall constitute the legal, valid, and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally.
  - h.** The person who signs the Agreement on behalf of Contractor:

    - i. is duly authorized to execute the Agreement,
    - ii. has authority and knowledge regarding Contractor’s payment of taxes, and

iii. to the best of the person's knowledge, Contractor is not in violation of any Pennsylvania or City of Philadelphia tax laws.

- i. Contractor is not subject to backup withholding because Contractor is exempt from backup withholding, Contractor has not been notified by the Internal Revenue Service (IRS) that Contractor is subject to backup withholding, or the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
- j. Contractor shall, at all times during the Term of the Agreement, be duly licensed as required to perform the Work. If there is no licensing requirement for Contractor's profession or for the Work to be performed, then Contractor shall be duly qualified and competent.
- k. There is no litigation or proceeding pending or, to the knowledge of the Contractor, threatened against or affecting it that (i) seeks to enjoin the performance of its obligations under this Agreement or (ii) if adversely determined, would materially adversely affect its ability to, perform such obligations.

## 5. TERMINATION.

### a. For Convenience.

- i. **Mutual Consent.** The PEA and Contractor may terminate the Agreement at any time by mutual written consent.
- ii. **PEA.** PEA may, at its sole discretion, terminate the Agreement, in whole or in part, upon thirty days' written notice to Contractor.

### b. For Cause by PEA.

PEA may terminate the Agreement, in whole or in part, immediately upon notice to Contractor, or at a later date as PEA may establish in its notice to Contractor, upon occurrence of any of the following events:

- i. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that the Work under the Agreement is prohibited.
- ii. Contractor no longer holds a license or certificate that is required to perform the Work.
- iii. Contractor materially breaches a covenant.
- iv. Any representation or warranty made by Contractor in Section 5. is false or misleading in any material respect when made or when deemed made or repeated.
- v. The insolvency, liquidation, or bankruptcy of Contractor.

### c. For cause by Contractor.

- i. PEA does not make payments required under this Agreement.
- ii. PEA fails to perform any other material covenant or obligation set forth in this Agreement if that failure is not cured within thirty (30) days after receipt of written notice from Contractor.

**d. Remedies.**

i. In the event of termination pursuant to Section 8(b), PEA shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor is not in default under Section 8(b), then the rights and obligations of PEA and Contractor shall be the same as if the Agreement were terminated pursuant to Section 8(a)(ii) of the Agreement.

**e. Post-termination Procedures.** Upon expiration or earlier termination of this Agreement for any reason, all rights and obligations of the Contractor shall cease, except as follows:

i. Contractor’s liability for any charges, payments or expenses due to PEA that accrued prior to the termination date shall be immediately due and payable on the termination date; and

ii. Contractor agrees that promptly after the termination date hereof, Contractor shall deliver to PEA, at Contractor’s expense, all originals and copies if any of the proprietary materials and any confidential information of PEA in the possession, custody or under the control of Contractor.

**6. NOTICE.**

**a. Requirement of a Written Notice; Permitted Methods of Delivery.** Unless expressly provided in the Agreement, each Party giving or making any notice, request, demand, or other communication (“Notice”) under the Agreement shall give the notice in writing sent by:

- i. certified mail with return receipt; and
- ii. Email.

**b. Addressees and Addresses.** Each Party giving Notice shall address the Notice to the appropriate person of the receiving Party (“Addressee”) at the address listed below, or to another Addressee or at another address designated by PEA or Contractor in a Notice pursuant to this section.

<p><b><u>For Contractor</u></b></p> <p>Mail addressed to:</p> <p>[NAME and ADDRESS]</p> <p>Or</p> <p>Email addressed to:</p> <p>[NAME and EMAIL]</p>	<p><b><u>For PEA</u></b></p> <p>Mail addressed to:</p> <p>Philadelphia Energy Authority</p> <p>Attn: Emily Schapira</p> <p>1400 John F. Kennedy</p> <p>City Hall Room 576</p>
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	<p>Philadelphia, PA 19107</p> <p>Or</p> <p>Email addressed to:</p> <p>Emily Schapira</p> <p>eschapira@philaenergy.org</p>
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**7. FORCE MAJEURE.**

- a. Force Majeure Event.** Neither Party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, a change in law or regulation, unusually severe weather, or any other act or circumstance beyond PEA or Contractor’s reasonable control and without fault or negligence of the Party (**Force Majeure Event**).
- b. Reasonable Efforts to Remove or Eliminate Force Majeure Event.** The Party affected by the Force Majeure Event shall make all reasonable efforts to remove or eliminate the cause of the Force Majeure Event and shall diligently pursue performance of its obligations under the Agreement after the Force Majeure Event ceases.
- c. Written Notice; Effect of Delay.** If there is a delay as a result of a Force Majeure Event, the Party delayed shall give written notice of the delay and the reason of the delay to the non-delayed Party within thirty days after the Party delayed learns of the Force Majeure Event. The Party delayed may request an extension of time up to the length of time of the delay due to a Force Majeure Event. Contractor shall not be entitled to additional compensation for delays that occur under this subsection.

**8. GOVERNING LAW.** This Agreement shall be deemed to have been made in Philadelphia, Pennsylvania. This Agreement and all disputes arising under this Agreement shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to principles of Pennsylvania law concerning conflicts of laws.

**9. FORUM SELECTION CLAUSE; CONSENT TO JURISDICTION.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Philadelphia, Pennsylvania before three arbitrators. The arbitration shall be administered by

JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

- 10. AMENDMENT.** PEA and Contractor may not amend the Agreement unless the amendment is first reduced to writing and signed by the PEA and Contractor. Any amendment is effective only in the specific instance and for the specific purpose identified in the amendment.
- 11. MERGER.** This Agreement, including any attached exhibits, constitutes the entire and integrated agreement between the PEA and Contractor and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. All prior and contemporaneous agreements between the PEA and Contractor on the matters contained in the Agreement are expressly merged and superseded by the Agreement.

**12. STANDARD OF CARE.**

- a. Professional Services.** If Contractor provides professional services under the Agreement, Contractor shall perform the Work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised by members of the profession currently practicing under similar conditions.
- b. Standard of Care.** The Contractor shall perform, or cause to be performed, the Work in accordance with the Standard of Care. As used herein “**Standard of Care**” means performance of the Work in compliance with all of the following standards:
- i. specific standards, methods and requirements set forth in this Agreement;
  - ii. all Applicable Laws and Applicable Codes applicable to the Work; and
  - iii. Good Industry Practice.

If a discrepancy arises between any of the foregoing standards, the most stringent standard will apply.

- c. Definitions.** For purposes of this Section 15, the following terms have the following meanings:
- i. **Good Industry Practice** means those practices, methods and acts that at any particular time, in the exercise of reasonable judgment, and consistent with current evaluation industry practices, as applicable, would have been expected to accomplish the desired result in the manner consistent with Applicable Law, Applicable Codes, and standards of reliability, safety, efficiency and environmental protection in effect at such time, including the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances.

ii. **Applicable Codes** means codes, standards or criteria promulgated by nationally recognized technical standards institutions, if any, which are applicable to or affect the Work or are specifically identified in the Agreement.

iii. **Applicable Law** means any law, regulation, requirement or order of any federal, state or local government agency, court or other governmental body, or the terms and conditions of any permit, license or governmental approval, applicable from time to time to the Work or the performance of any obligations under this Agreement.

**13. LIMITATION OF LIABILITIES.** Neither Party shall be liable in contract, tort, strict liability, warranty or otherwise for (a) any special, indirect, incidental, consequential, or non-economic damages resulting from or in any way related to the Agreement, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system; or (b) any damages of any sort whatsoever arising solely from the termination of the Agreement in accordance with its terms; provided, however, the provisions of this section do not apply to liability arising under or relating to Section 8 (Representations and Warranties) or Section 9(d)(i) (Termination).

#### **14. INDEMNITY.**

- a. **Generally.** With regard to Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects set forth in subsection (b) of this section, Contractor releases and shall indemnify, defend, and hold harmless PEA, PEA's officials, employees, agents, and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys' fees and costs at trial and on appeal, that arise from or are connected to or are directly or indirectly caused or claimed to be caused in whole or in part by the fault or negligent, reckless, or willful acts or omissions of Contractor or Contractor's agents, employees, or subcontractors in performing Work required by the Agreement. However, Contractor's duty to release, indemnify, and hold harmless as required by this subsection shall not include any liability arising from the established sole negligence or willful misconduct of PEA, PEA's officials, employees, agents, or volunteers.
- b. **Professional Services.** With regard to Contractor's performance of professional services, Contractor releases and shall indemnify, defend, and hold harmless PEA, PEA's officials, employees, agents, and volunteers from and against all claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys' fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors, or omissions of Contractor or Contractor's agents, employees, or subcontractors associated with the Work.

#### **15. TAX INDEBTEDNESS**

- a. **Certificates Required.** PEA does not wish to do business with tax delinquents or other

businesses indebted to the City. In furtherance of this policy, the following certifications have been developed and shall form a part of the Agreement.

- b. Contractor's Certification of Non-Indebtedness.** Contractor hereby certifies and represents that Contractor and Contractor's parent(s) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.
- c. Subcontractor's Certification of Non-Indebtedness.** Contractor shall require all Subcontractors performing work in connection with the Agreement ("Subcontractor" shall also include suppliers providing goods or materials) to be bound by the following provision, and Contractor shall cooperate fully with the PEA in exercising the rights and remedies described below or otherwise available at law or in equity: "Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent(s) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City"). and will not at any time during the term of this Agreement, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.
- d. City of Philadelphia Tax and Regulatory Status and Clearance Statement.** To assist PEA, through the City of Philadelphia Department of Revenue and Department of Licenses and Inspections, in confirming this Certification, Contractor must submit to PEA the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this Agreement as Attachment B.

## **16. AUDITS, INSPECTION RIGHTS, RECORDS**

- a. Audits.** From time to time during the term of this Agreement and for a period of five (5) years after termination of this Agreement, the PEA may audit all aspects of the Contractor's performance under this Agreement, including but not limited to its billings and invoices, at Contractor's office. If so requested, Contractor shall submit to the requesting party all vouchers or invoices presented for payment pursuant to this Agreement, all canceled check, work papers, books, records, and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, canceled checks and other materials shall be subject to periodic review and audit in the PEA of Philadelphia. Notwithstanding the foregoing Contractor shall not be required to maintain such documentation in excess of five (5) years from the expiration or termination of this Agreement.
- b. Inspection.** All services and materials provided under this Agreement shall be subject to inspection and review by the PEA and state and federal representatives. Contractor shall



cooperate with all inspections and reviews conducted in accordance with the provisions of this Agreement. Such inspection and review of Contractor's rendering of services and materials, including without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, verification of account accuracy, and meetings with any staff members who are either directly or indirectly involved in providing services and materials under this Agreement.

- c. **Availability of Records.** Contractor shall make available at Contractor's office, during the term of this Agreement, all records pertaining to this Agreement for the purpose of inspection, audit, or reproduction by any authorized PEA representative, or the Pennsylvania Auditor General, and any other federal, state or City auditors.
- d. **Retention of Records.** Contractor shall retain all records, books of account and documentation pertaining to this Agreement for a period of seven (7) years following expiration or termination of this Agreement; however, if any litigation, claim, or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims, or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

17. **NONDISCRIMINATION.** This Agreement is entered into in concert with the terms of the Philadelphia Home Rule Charter and in its performance; Consultant shall not discriminate nor permit discrimination against any person because of race, color, religion, gender identity or expression, national origin or sex. In the event of such discrimination, PEA may terminate this Agreement forthwith.

18. **LIMITATION OF LIABILITY.** To the fullest extent permitted by applicable law or regulations, Consultant's liability to the PEA for any claim or cause of action arising out of or related to this Agreement, including breach of warranty, breach of contract, negligence, and other torts arising out of or relating to this Agreement and the Schedules, shall not exceed the amounts paid or payable by Consultant for such project.

19. **CHAPTER 17-400 OF THE PHILADELPHIA CODE**

- a. In accordance with Chapter 17-400 of the Philadelphia Code, Consultant agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring tenure of employment, promotion, terms privileges or condition of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the Authority to all rights and remedies provided in this Agreement or otherwise available in Law or equity.
- b. Consultant agrees to include the immediately preceding paragraph; with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement.

- c. Consultant further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling the Authority to all rights and remedies provided herein or otherwise available in Law or equity.

**20. WAIVERS.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right.

## **21. ASSIGNMENT.**

- a. **No Assignment without Consent.** This Agreement may not be assigned by either party, directly or by merger or other operation of law, without the consent of the other party, which consent shall not unreasonably be withheld. Any purported assignment of this Agreement in violation of this Section 14.6 will be null and void.
- b. **Effect of Consent.** In no instance shall PEA's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations under the Agreement. Any assignee, transferee, or subcontractor of Contractor shall be considered the agent of Contractor and bound by all provisions of the Agreement. Contractor, and its surety, if any, shall be liable to PEA for complete performance of the Agreement as if no such assignment, sale, subcontracting, disposal, transfer, or delegation had occurred, unless PEA otherwise agrees in writing. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the PEA and Contractor and their respective successors and assigns, if any.

**22. BINDING EFFECT.** This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

**23. SEVERABILITY.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as may, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions hereof will, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

**24. COMPLETE AGREEMENT.** This Agreement and the Program Agreement constitute the entire agreement between the parties relating to the subject matter hereof and supersede all prior agreements (including the Energy Audit Agreement), negotiations, discussions and understandings, written or oral, between the parties as to the subject matter hereof.

**25. NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement provides any benefit to any third party or entitles any third party to any claim, cause of action, remedy or

right of any kind.

**26. FURTHER ASSURANCES.** The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

**27. HEADINGS.** Headings and subtitles used in this Agreement are for the purpose of convenience only, and no heading or subtitle may be construed to modify or be used to interpret the text of any section.

**28. COUNTERPARTS.** This Agreement may be executed in any number of counterparts that, taken together, will constitute one and the same agreement.