Site Access Agreement Template

*[Throughout this template, fill-in-the-blank areas are indicated with the symbols <> and notes are indicated by [ ].*

*Disclaimer: This template is intended to be used as a resource. This template should be carefully reviewed by agency counsel, agency contracting staff, and other appropriate agency staff, as applicable. Agency staff should adhere to their agency's policies and requirements, and should use their agency's templates and forms, as appropriate.*

*It is critical to coordinate with the real property group early in the process to get their input and concurrence regarding the planned approach and agreement terms/conditions.*

*While different legal instruments may be used, there will be different legal consequences. For example, an easement will require recording, and the type of instrument could have different environmental consequences. Check with your agency’s counsel for the appropriate legal instrument and the resulting modifications throughout the document (for example, for a lease, use Grantor/Grantee and for a license, use the terms Licensor/Licensee)*

*The site access instrument used should be compared to the RFP to ensure compatibility. There may be some provisions in the site access (instrument used) that should be moved to the RFP and vice- versa (examples: environmental provisions, O&M). Contracting/legal staff should coordinate with real property staff to determine the appropriate location for each clause. Avoid duplication when possible to avoid language conflicts that may occur due to document edits.*

*Some agencies, Department of Defense in particular, may require payment/in-kind consideration for use of the land. Check with your agency’s legal counsel.*

*Some of the provisions are specific to ground-mounted systems, although may be applicable if there is concern regarding impact to land surrounding a roof-top or carport system.]*

**Site Access *<insert instrument to be used; License, Easement, or Lease>* Agreement**

**For Photovoltaic System Installation and Operation**

***<Agency>***

***<Location details>***

**THIS SITE ACCESS *<instrument used>* OUTGRANT** *<Site Access Instrument used>* which is effective as of the date of execution, is pursuant to the authority of (40 U.S.C. Section 1314, 10 USC 2668 or other); by the *<agency>*, hereinafter referred to as GRANTOR, and *<PV Contractor name>*, with its principal offices located at *<address>*, hereinafter referred to as GRANTEE. When used in this Site access *<Instrument used>*, unless the context specifies otherwise, "Grantor" shall include the successor in function of the Grantor, and "Grantee" shall include its successors and assignees, and their duly authorized representatives. The Grantor and the Grantee may be referred to jointly as the "Parties” and each separately as a "Party."

**WHEREAS,** the GRANTOR and the GRANTEE desire to execute this Site Access *<Instrument used>* to allow and encourage the performance by *<agency>* of the Energy Savings Performance Contract Energy Sales Agreement (ESPC ESA) dated *<date>* between GRANTEE and GRANTOR;

**WHEREAS**, the U.S. Government owns in fee simple that certain real property described in Exhibit B, attached hereto and made a part hereof, and the *<agency>* has custody and control of such property;

**WHEREAS,** the GRANTOR desires to receive electricity generated on-site at the *<agency site name>* for the purpose of meeting national goals regarding the generation and use of renewable energy at government-owned installations, which goals are set forth in Section 203 and other sections of the Energy Policy Act of 2005, P.L. 109-58;

**WHEREAS**, the GRANTOR desires to establish a fixed rate for electrical power purchased from an on-site photovoltaic (PV) system for a term of *<x>* years, pursuant to the ESPC ESA;

**WHEREAS**, the GRANTEE desires to use the property described in Exhibit B for the purpose of generating solar electricity for on-site use and the GRANTOR agrees to grant an Site Access *<Instrument used>* to the GRANTEE to use the property described in Exhibit B for this purpose;

**WHEREAS,** the GRANTEE, in its capacity as the ESCO may enter into collateral agreements with third parties for installation, operation, and maintenance of a PV system;

**WHEREAS,** the GRANTOR and the GRANTEE desire to establish protocols to coordinate site activities and assure that access to the site for the installation, operation, and maintenance of a PV system conforms to GRANTOR'S standards;

**WHEREAS**, the GRANTEE, in its capacity as the ESCO, is subject to all standard environment, safety, and health requirements applicable to non-federal entities as defined by federal, state, and local law;

**WHEREAS**, the GRANTOR in its capacity as site owner and manager is obligated to ensure that the site is managed to minimize the impact on its neighbors;

**WHEREAS,** the GRANTOR plans to purchase the PV system at fair market value, at the end of the ESPC ESA contract, per the terms specified in the ESPC ESA;

**WHEREAS,** the GRANTOR acknowledges and accepts the rights and obligations set forth in the aforementioned ESPC ESA is hereby granting the property rights contained herein to induce the GRANTEE to develop, design, construct, operate and maintain a PV system for the benefit of GRANTOR; and

**NOW, THEREFORE** in consideration of the mutual agreements and covenants hereinafter contained, the GRANTOR hereby grants to the GRANTEE and to its successors and assigns, a Site Access *<Instrument used>* to install, construct, alter, repair, replace, reconstruct, operate and maintain a *<x>* MW PV system, hereinafter referred to as the "System," on the premises described in Exhibit B, hereinafter referred to as the "Premises,” and which is attached hereto and made a part hereof, subject to any and all existing outgrants and encumbrances.

The rights conveyed to the Grantee under this Site Access *<Instrument used>* are solely for the purposes of installing, operating and maintaining the System. Grantor reserves for itself and its successors, and assigns, any and all rights not otherwise conveyed to Grantee under this Site Access *<Instrument used>*, and any and all uses of, or activities on, the Premises that are not inconsistent with the terms of this Site Access *<Instrument used>,* and that are not prohibited herein.

The GRANTOR has determined that the granting of this Site Access *<Instrument used>* will not be adverse to the interests of the UNITED STATES and is compatible with the public interest; subject to the following covenants, conditions and restrictions:

Notices

All correspondence and notices to be given pursuant to this Site Access *<Instrument used>* shall be addressed to the Authorized Representative listed in Section 6. Notice shall be deemed to have been duly given and received: (i) if hand delivered to a party at the regular mail address of the party specified above, against receipted copy, or (ii) if given by a nationally recognized and reputable overnight delivery service at the regular mail address of the party specified above, the day on which the notice is actually received by the party. If a copy is required above, then Notice shall not be deemed received until the last of the Notice and the copy of the Notice is deemed received as provided above. If Notice is tendered under the provisions of this Section and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided herein.

1. Authorized Representatives and Points of Contact

The GRANTOR's Authorized Representative shall be:

*<Name, title>*

*<Agency>*

*<Address, phone, email, fax>*

The GRANTEE'S Authorized Representative shall be:

*<Name, title>*

*<Company>*

*<Address, phone, email, fax>*

GRANTOR and GRANTEE each will assign a single point-of-contact (POC) to ensure coordinated and efficient communication between the GRANTOR and GRANTEE.

GRANTOR's POC shall be:

*<Name, title>*

*<Agency>*

*<Address, phone, email, fax>*

GRANTEE’S POC shall be:

*<Name, title>*

*<Company>*

*<Address, phone, email, fax>*

GRANTOR and GRANTEE shall promptly notify each other with any change to the individuals identified above or their contact information. Such changes shall be effective upon receipt of written notice.

Upon receipt of written notice, such change shall be incorporated into this Site Access *<Instrument used>* and no formal modification shall be required.

No notice, order, clarification, direction, determination, requirement, consent, agreement, or approval under this Site Access (Instrument used) shall be of any effect unless provided in writing to the authorized representatives at the address set out above.

2. Limitations

1. *[For Dept of Defense projects]* This Site Access *<Instrument used>* ***<****is/is not>* subject to 10 USC 2662 Real Property Transactions: Reports to Congressional Committees, as amended.
2. This instrument is effective only insofar as the rights of the United States in the property are concerned, and the GRANTEE shall obtain such permission as may be required on account of any other existing rights. The granting of this Site Access *<Instrument used>* does not eliminate the necessity of obtaining any permit which may be required pursuant to the provisions of *[list laws such as Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403) Section 404 of the Clean Water Act (33 U.S.C. § 1344)]* or any other permit or license which may be required by Federal, state or local statute in connection with use of the Premises.

3. Failure of the Grantor to Insist on Compliance

The failure of the GRANTOR to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Site Access *<Instrument used>*, shall not be construed as a waiver or relinquishment of the GRANTOR's right to the current or future performance of any such terms, covenants or conditions and the GRANTEE's obligations in respect to such performance shall continue in full force and effect.

4. Term

This Site Access *<Instrument used>* shall be effective upon execution by GRANTOR and shall continue for a period of *<x, no greater than 25>* years from the effective date of this Site Access *<Instrument used>*.

5. Termination and Non-Compliance

1. **Termination:**This Site Access *<Instrument used>* shall terminate, in whole or in part as provided herein:
   1. Upon fair market value purchase of the PV System by the Grantor;
   2. Upon GRANTEE’s noncompliance with the terms of the Site Access *<Instrument used>*;
   3. Upon expiration of two (2) consecutive years of non-use of the Site Access *<Instrument used>*for the purpose or purposes granted;
   4. Upon abandonment of the Site Access *<Instrument used>*by GRANTEE;
   5. At any time by mutual consent of the GRANTOR and GRANTEE, expressed in writing; or
   6. No later than *<x>* days after the termination of the ESPC ESA.
2. In the event of a termination for any reason other than noncompliance, the GRANTOR shall provide a written termination notice, with *<x>* days written notice, to the GRANTEE or its successors or assigns and the termination shall be effective as of the date of such notice.
3. All or any part of this Site Access (Instrument used) may be terminated by the GRANTOR upon sixty (60) days written notice to GRANTEE if the GRANTOR determines that all or any such part of the Premises have been abandoned or not used for a period of two (2) years by the GRANTEE. If GRANTOR has made a good faith effort to locate GRANTEE to provide Notice to Terminate, but GRANTEE cannot be located or no longer exists as a corporate entity, the GRANTOR may proceed with termination, and provide notice, as necessary, in the land records by any appropriate method required to clear title.
4. **Noncompliance:** The GRANTEE is charged at all times with full knowledge of all the limitations and requirements of this Site Access *<Instrument used>*, the necessity for correction of deficiencies, and with compliance with the terms and conditions. The GRANTOR will notify the GRANTEE of any noncompliance with this Site Access *<Instrument used>*, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the noncompliance.

In the event the GRANTOR initiates termination for noncompliance, the GRANTOR shall provide the GRANTEE, or its successors or assigns, written notice of its intent to terminate the Site Access *<Instrument used>*. GRANTEE shall have thirty (30) days, or such additional time as provided by the GRANTOR, after receipt of the notice of intent to terminate to come into compliance with the terms hereof, to the reasonable satisfaction of the GRANTOR. If GRANTEE fails to come into compliance within the cure period, this Site Access *<Instrument used>* shall terminate at the expiration of the period provided for cure.

If the GRANTEE fails to satisfactorily correct, or reach agreement on the corrective action necessary to reach compliance, the GRANTOR may elevate the GRANTEE’s noncompliance to a default upon delivery to the GRANTEE of a written notice of default, giving a period of time in which to correct the default, subject to Section 4 on Cure, unless otherwise provided in this Site Access *<Instrument used>*.

If the GRANTEE fails to satisfactorily correct, or reach agreement on the corrective action necessary to stop such default, GRANTOR may terminate this Site Access *<Instrument used>*. In the event of such a termination, the GRANTOR may send GRANTEE a notice to terminate this Site Access *<Instrument used>*, or, alternatively, may stay the sending of such notice to terminate, and may seek damages, specific future measures to prevent the reoccurrence of such default, and/or pursue any other remedy available under law or equity.

6. Cure

Grantee shall be deemed to have violated or neglected to perform under this Site Access *<Instrument used>*if it fails to comply with any provision herein, where such failure to comply continues uncured for sixty (60) days after delivery of written notice by the GRANTOR to the GRANTEE. If, however, the time required to cure exceeds the sixty (60) day period, the Grantee shall not be deemed to be in default if the GRANTEE within such period shall begin the actions necessary to bring it into compliance with this Site Access *<Instrument used>*in accordance with a compliance schedule acceptable to the GRANTOR.

7. Liens

1. Other than Lender or System Lessor's security interest in, or ownership of, the System, GRANTEE shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature (Liens) on or with respect to the Premises or any interest therein. GRANTEE also shall pay promptly before a fine or penalty may attach to the System or Premises any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by GRANTEE or its agents and subcontractors on the System or Premises. If GRANTEE breaches its obligations under this Section, it shall (i) immediately notify GRANTOR in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to GRANTOR, and (iii) defend and hold harmless GRANTOR against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
2. GRANTOR shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If GRANTOR breaches its obligations under this Section, it shall immediately notify GRANTEE in writing and shall promptly cause such Lien to be discharged and released of record without cost to GRANTEE.

8. Compliance with Applicable Laws and Regulations

1. The GRANTEE shall at all times observe and comply, at its sole cost and expense, with the provisions of all federal, state, and local laws, regulations, and standards, and in particular those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health that are or may become applicable to the Premises or the GRANTEE's activities on the Premises.
2. In addition, GRANTEE shall at all times comply with certain technical requirements for the installation and operation of the System, to include the specific requirements pertaining to installation access, operational security, and cyber security, as more specifically provided and approved from time to time by the GRANTOR.
3. Additional compliance conditions are included in section 29 Compliance with Environmental Laws.

9. Condition of Premises

The GRANTOR and GRANTEE acknowledge that they have inspected the Premises, knows the condition, and understand that the property is granted without any representation or warranties, other than representations made in Section 29, Warranty of Authority and Representations of this Site Access *<Instrument used>*, and without obligation on the part of the GRANTOR to make any alterations, repairs, or additions.

An Environmental Condition of Property ("ECP") Report, *<date>*, documenting the known history of the Premises with regard to environmental and other conditions; including the storage, release or disposal of hazardous substances thereon, is incorporated herein by reference. Upon expiration, revocation or termination of this Site Access *<Instrument used>*, another ECP Report shall be prepared, at the GRANTEE's expense, which will document the environmental condition of the Premises at that time. A comparison of the two ECP Reports will assist the *<agency>* in determining any necessary adjustments to the fair market value purchase.

10. Inspection and Protection of Property

1. All portions of the Premises shall at all times be protected and maintained in good order and condition by and at the expense of the GRANTEE. The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this Site Access Agreement and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes.
2. Any property of the GRANTOR damaged or destroyed by the GRANTEE incident to the use and occupation of the Premises shall be promptly repaired or replaced by the GRANTEE to the reasonable satisfaction of the GRANTOR or in lieu of such repair or replacement the GRANTEE shall, if so required by the GRANTOR, pay to the GRANTOR money in an amount sufficient to compensate for the loss sustained by the GRANTOR by reason of damages to or destruction of the GRANTOR's property.
3. GRANTOR shall have the right to issue warnings and bar from the Premises violators of construction, operation, environment, safety, and health, and security performance standards.
4. GRANTOR and GRANTEE will collaborate to conduct routine inspections of the installation, operation, and maintenance activities to ensure construction, operation, environment, safety, and health performance standards are met and risks to employees, the public, and the environment are minimized. GRANTOR and GRANTEE will promptly provide each other all inspection reports and any findings and corrective actions.

11. Boundary or Survey Monument

The GRANTEE shall not disturb, obliterate or destroy any land boundary or survey monument on the Premises without prior written approval of the GRANTOR's authorized representative.

12. Alterations

No additions to or alterations of the Premises other than those specifically provided for under the terms of this Site Access Agreement shall be made without the prior written consent of the GRANTOR.

13. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

GRANTEE shall employ reasonable methods to protect from damage existing vegetation, structures, utilities, and improvements:

1. At or near the Premises, and
2. On adjacent property, including property of a third-party, the locations of which are made known to or should be known by GRANTEE.

14. Site Access, Access Control, and Security

1. The GRANTEE shall have the right to enter the *<federal site>* to exercise its rights under this Site Access Agreement, subject to certain restrictions and/or special conditions required by the *<agency>*. Access shall be limited to *<list hours, example 7- 5 M-F>* for regular operations, excluding federal holidays. Access outside of these time periods will be allowed, with approval from GRANTOR’s authorized representative, for emergency situations. The GRANTEE acknowledges and recognizes that:
   1. Premises are located on an active U.S. site and, as such, access may be subject to temporary closings and/or other activities. It is expressly understood that the GRANTOR may limit or restrict the right of access granted in any manner considered necessary, in the GRANTOR's sole discretion.
   2. GRANTOR, acting by and through his duly authorized *<agency leadership name/title>*, exercises command and control over and with respect to the Premises, including traffic control, security, force protection, law enforcement, fire protection, activities performed thereon and command and control matters.
2. Security requirements are as follows: *<list requirements/restrictions>*.
3. GRANTEE shall make emergency access to the site available to the local fire department through appropriate means.
4. GRANTEE shall ensure the security of the facility. It is expressly understood that GRANTOR has no responsibility to provide any security measures to protect GRANTEE’s interests within the Premises.
5. GRANTEE shall affirmatively control access to the Premises by *<fence or other depending upon PV system type>* to prevent public access to the site to ensure public safety and health.
6. GRANTEE shall ensure any lighting design and operation reduces nuisance to the lowest level achievable with safety and security considerations. All lighting will be directed and will be motion-activated.
7. The right is reserved to the United States, its officers, agents, employees or representatives ("Government Officials") to enter upon the Premises for the purpose of inspection and when otherwise deemed necessary for the protection of the interests of the GRANTOR, including for purposes related to compliance with environmental, safety, and occupational health laws and regulations, whether or not the GRANTOR is responsible for enforcing them. The GRANTOR normally will give the GRANTEE twenty-four (24) hours prior notice of its intention to enter the Premises, unless it determines the entry is required for safety, environmental, operations, or security purposes. In which case GRANTOR will give such notice as is practicable under the circumstances. If requested, Government Officials inspecting the Premises shall comply with such reasonable internal safety procedures of the GRANTEE. GRANTEE shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof in connection with the exercise of such right of entry. Provided, however, that nothing in this section shall be considered as a waiver by the GRANTEE of any remedy available to it under the Federal Tort Claims Act.

15 .Construction, Installation, Use, Operation and Maintenance

1. All work incident to the design, construction, installation, use, maintenance and operation of the System on the Premises shall be performed by the GRANTEE without cost or expense to the GRANTOR and to the reasonable satisfaction of the GRANTOR. GRANTEE shall submit final plans and specifications of proposed construction to the GRANTOR's authorized representative and obtain his/her approval prior to commencement of construction, which approval shall not be unreasonably withheld or delayed.
2. All work connected with the construction, installation, use, maintenance and operation by the GRANTEE as contemplated by this Site Access Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations governing worker health and safety.
3. The System will be owned and operated by GRANTEE at its sole cost and expense. Any repair or maintenance of the System will be completed by or for GRANTEE, at its sole cost and expense, for GRANTEE'S benefit as legal and beneficial owner or lessee of the System.
4. GRANTOR and GRANTEE each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of electricity. GRANTOR and GRANTEE shall each designate personnel and establish procedures such that both may provide notice of such conditions requiring GRANTEE's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. GRANTOR and GRANTEE each shall notify the other upon the discovery of an emergency condition in the System. If an emergency condition exists, GRANTEE shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner.
5. The GRANTEE may authorize use of the Premises by its agents and contractors in connection with the installation, operation and maintenance of the System, subject to the approval *<agency>* and subject to the terms and conditions of this Site Access Agreement. Use of the Premises by the GRANTEE's agents and contractors shall not relieve the GRANTEE of any of its obligations under this Site Access Agreement.

16. Project Planning and Execution

1. GRANTEE shall collaborate with GRANTOR to define and execute a comprehensive and efficient project management and execution plan. The plan will address the construction, commissioning, interconnection, operations, and maintenance phases including a risk-graded approach to address hazards, hazard mitigation and inspections.
2. GRANTOR shall make available to GRANTEE all relevant technical schematics, drawings, and specifications necessary for the interconnection of the System to the existing *<agency site name>* electrical system.
3. GRANTEE shall take all reasonable steps necessary to reduce the impact on GRANTOR's neighbors during construction and operation.
4. GRANTOR must approve the final project management and execution plan prior to the start of construction and GRANTOR must approve the final interconnection of the System to GRANTOR's infrastructure at *<agency site name>*, approval not to be unreasonably withheld.
5. GRANTEE is responsible for all work performed on the Premises and the delivery, storage, security, and disposition of all materials delivered to the Premises until completion of the installation and during maintenance and operation of the System.

17. Operations and Storage Areas

1. GRANTEE shall confine all operations *<including storage of materials>* on the Premises to areas authorized or approved by the GRANTOR's Authorized Representative, which site shall be reasonably accommodating for staging purposes.
2. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by GRANTEE only with the approval of the GRANTOR's Authorized Representative (whose approval shall not be unreasonably withheld) and shall be built with labor and materials furnished by GRANTEE without expense to GRANTOR. The temporary buildings and utilities shall remain the property of GRANTEE and shall be removed by GRANTEE at its expense upon completion of installation of the System.
3. GRANTEE shall use only established roadways; or use temporary roadways constructed by GRANTEE when and as authorized by the GRANTOR's Authorized Representative. When it is necessary to cross curbs or sidewalks, GRANTEE shall protect them from damage. GRANTEE shall repair or pay for the repair of any damaged curbs, sidewalks, roads, fences or other structures.

18. GRANTOR's Right to Stop Work

1. Employees, officials, agents, and contractors of GRANTOR shall have the right, at any time, to require GRANTEE and its employees, officials, agents, and contractors to stop all, or any part, of the installation, operation and maintenance of the System on the Premises when, in the judgment of the GRANTOR's Authorized Representative, an imminent hazard to employees, the public, or the environment exists.
2. Upon verbal direction or receipt of a stop work order, GRANTEE shall immediately comply with its terms. The GRANTOR's Contracting Officer will contact GRANTEE to resolve the stop work order.
3. GRANTEE shall not be entitled to and GRANTOR shall not be liable for any damages, losses, or claims of any nature arising from or associated with such stop work order.
4. GRANTOR will work with GRANTEE to promptly address and mitigate the hazard, and to resume System installation, operation, or maintenance activities.

19. Cleaning Up

1. GRANTEE shall at all times keep the Premises, including storage areas, free from accumulations of waste materials. Before completing the Installation Work, GRANTEE shall remove from the Premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of GRANTOR and leave the area in a clean, neat, and orderly condition, satisfactory to the GRANTOR's Authorized Representative.
2. During the maintenance and operation of the System, good grounds keeping practices shall be followed at all times and the Premises shall be maintained in clean, neat, and orderly condition to the reasonable satisfaction of the GRANTOR.

20. GRANTEE’s Indemnity

*[Modify based on agency indemnification policy.]*

GRANTEE agrees that it shall indemnify and hold harmless GRANTOR from and against any and all Losses incurred by the GRANTOR’s Indemnified Parties to the extent arising from or out of the following:

1. Any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of GRANTEE’S negligence or willful misconduct, or
2. Any infringement of patents or the improper use of other proprietary rights by GRANTEE or its employees or representatives that may occur in connection with the performance of the PV System installation and operations and maintenance

GRANTEE shall not, however, be required to reimburse or indemnify any GRANTOR Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any GRANTOR Indemnified Party. The indemnification procedures are specified in *[list here or refer to ESPC ESA Section]*.

21. GRANTEE Performance

The failure of the GRANTOR to insist in any one or more instances upon strict performance of any of the terms, covenants or conditions of this Site Access Agreement shall not be construed as a waiver or relinquishment of the GRANTOR'S right to the future performance of any such terms, covenants, or conditions and the GRANTEE'S obligations with respect to such future performance shall continue in full force and effect.

22. Covenant Against Contingent Fees

The GRANTEE warrants that no Person or selling agency has been employed or retained to solicit or secure this Site Access Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the GRANTEE for the purpose of securing business. For breach or violation of this warranty the GRANTOR shall have the right to annul this Site Access Agreement without liability or, in its discretion, to require the GRANTEE to pay the full amount of such commission, percentage, brokerage, or contingent fee.

23. Transfers and Assignments

1. The conditions of this Site Access Agreement shall extend to and be binding upon and shall inure to the heirs, representatives, successors, and assigns of the GRANTEE. The GRANTEE shall neither transfer nor assign this Site Access Agreement or any property on the Premises, nor sublet the Premises or any part of the property, nor grant any interest, privilege, or Site Access Agreement whatsoever in connection with this Site Access Agreement without the express written permission of the GRANTOR which permission shall not be unreasonably withheld, provided, however, that GRANTEE shall be permitted to transfer or assign this Site Access Agreement, without such express written permission, to any entity to whom GRANTEE assigns the ESPC ESA
2. The GRANTOR acknowledges that it provides this Site Access Agreement as one component of a bi-party arrangement between GRANTOR and GRANTEE which arrangement is memorialized in two: this Site Access Agreement, and the ESPC ESA between GRANTOR and GRANTEE. In accordance with this bi-party arrangement, if GRANTEE assigns its interests in the ESPC ESA to a third-party including a Lender or System Lessor, GRANTOR agrees to the assignment of this Site Access Agreement to such third-party if that party is a Qualified Assignee under the ESPC ESA between GRANTOR and GRANTEE.
3. In the event of any transfer or Assignment of the ESPC ESA by the GRANTEE to a third-party including a System Lessor or Lender, GRANTOR agrees that either the third-party, System Lessor or Lender may take the place of GRANTEE for purposes of enjoying the benefits and performing the obligations specified in this Site Access Agreement.
4. Notwithstanding any other provision of this Site Access Agreement, GRANTOR agrees to provide Lender or System Lessor with a copy of any notice of noncompliance GRANTOR may send to GRANTEE pursuant to the terms of this Site Access Agreement. GRANTOR agrees that Lender or System Lessor shall have the opportunity and period of time to cure any noncompliance by GRANTEE as provided pursuant to the terms of *<enter RFP Section>*.
5. In furtherance of the purposes of this Site Access Agreement, GRANTOR agrees to provide an Acknowledgement and Confirmation as Exhibit A to the ESPC ESA indicating that the PV System installed on its Premises is considered to be personal property and not a fixture. GRANTOR acknowledges that GRANTEE's Lender or System Lessor may have a security interest in the System.

24. Mandatory GRANTEE Covenants

Although this Site Access Agreement is not subject to either the Federal Acquisition Regulation or *<add any other applicable regulations such as the Defense Federal Acquisition Regulation Supplement>*, the *<agency>*, pursuant to *<applicable authority>*, the advisability of the inclusion of the requirements set forth in the list contained in Exhibit C (hereafter "Mandatory GRANTEE Covenants"). These Mandatory GRANTEE Covenants are hereby incorporated by reference into this Site Access Agreement as if fully set forth herein and shall be binding upon the GRANTEE, and the GRANTEE's successors in interest or assigns, and any GRANTEE agents, licensees, contractors and their subcontractors or invitees, or their subsidiaries (collectively the "GRANTEE Parties"). The GRANTEE Parties shall comply with the Mandatory GRANTEE Covenants as currently promulgated, or as may be amended from time to time. Failure to comply with these Mandatory GRANTEE Covenants shall be subject to immediate termination of this Site Access Agreement, at the Government’s sole discretion.

25. Taxes

GRANTEE shall be responsible for all taxes (i.e., both real property taxes and personal property taxes) levied against the Premises attributable to the establishment of this Site Access Agreement and associated activities by GRANTEE hereunder.

26. Force Majeure

If a force majeure event has occurred which excuses the performance of the Parties to the ESPC ESA, then performance of the GRANTOR's and GRANTEE's obligations specified herein shall also be excused.

27. Warranty of Authority and Representations

The signatories warrant that they have full right and authority to enter into this Site Access Agreement. GRANTOR represents that there are no existing encumbrances related to the Premises, *<if applicable cite any exceptions>*. GRANTOR represents that the Premises are free of Hazardous Materials and further acknowledges its responsibility to mitigate the impacts associated with pre-existing Hazardous Materials.

28. Compliance with Environmental Laws

1. The term "Environmental Law'' means any statute, law, act, ordinance, rule, regulation, order, decree, or ruling of any Federal, State, interstate, and/or local governmental, quasi-governmental, legislative, administrative or judicial body, agency, board, commission or other authority relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release, and/or transportation of Hazardous Substances, including, without limitation, CERCLA, the Solid Waste Disposal Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Emergency Planning and Community Right To Know Act, and the environmental control laws of the State of <state>, each as now or hereafter amended, and all regulations and interpretive guidelines respectively promulgated thereunder.
2. The GRANTEE shall comply, at its sole cost and expense, with all Environmental Laws that are or may become applicable to the Premises or the GRANTEE's activities on the Premises, including but not limited to all applicable federal, state, interstate, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. The GRANTEE shall at its own expense maintain in effect any permits, license or other governmental approvals relating to Hazardous Substances, if any, required for the GRANTEE’s use of the Premises. The GRANTEE shall make all disclosures required of the GRANTEE by any such Environmental Laws, and shall comply with all orders, with respect to the GRANTEE's and its employees', agents', contractors' and invitees' use of the Premises, issued by any governmental authority having jurisdiction over the Premises and take all action required by such governmental authorities to bring the GRANTEE's and its employees', agents', contractors' and invitees' activities on the Premises into compliance with all Environmental Laws affecting the Premises.
3. The GRANTEE shall indemnify and hold harmless the United States, from any and all claims for damages, costs, expenses, liabilities, fines, or penalties, including the United States' cost of defending against such claims, arising from or caused in whole or in part, directly or indirectly, by:
   1. The presence in, on, under, or about the Premises or any discharge or release in or from the Premises of any Hazardous Substance, to the extent that any such presence, discharge, or release is caused by the GRANTEE's activities, or the activities of any of the GRANTEE's employees, agents, contractors or invitees, or
   2. The GRANTEE's failure to comply with its covenants under this Section.

The indemnity obligations created by this Section shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other response action of the Premises. This obligation shall survive the expiration or termination of this Site Access Agreement, and the GRANTEE's obligations hereunder shall apply whenever the United States incurs costs or liabilities for the GRANTEE's actions of the types described in this Section.

1. Notwithstanding any other provision of this Site Access Agreement, the GRANTEE does not assume any liability or responsibility for environmental impacts and damage caused by the GRANTOR, its agents, employees or contractors on any portion of the Installation, including the Premises, provided such impacts or damage are not exacerbated by GRANTEE. The GRANTEE has no obligation under this Site Access Agreement to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use or release of any Hazardous Substances by the GRANTOR, its agents, employees or contractors, on or from any part of the Installation, including the Premises. Further, the GRANTEE has no obligation under this Site Access Agreement to undertake any environmental response, remediation, or cleanup relating to such use or release.

For the purposes of this Section:

* 1. The term, "defense" or "environmental response, remediation, or cleanup", include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupation" or "use" shall mean any activity or presence (including preparation and installation) in or upon such portion of, or such building, facility, or other improvement on, the Premises.
  2. This Section does not relieve the GRANTEE of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.
  3. This Section shall survive the termination or relinquishment of this Site Access Agreement.

29. Environmental Protection

1. The disposal of any toxic or hazardous materials within the Premises is strictly prohibited.
2. If the GRANTEE discovers any hazardous materials or hazardous wastes at the Premises of any kind, in, on, under, about or migrating from or onto the Premises, the GRANTEE shall immediately stop work, take measures to reduce exposure to all GRANTEE site personnel, notify GRANTOR of such condition and location and shall ensure access to the site of discovery is restricted until appropriate response activities have been completed, and any required notifications are made to State and/or federal environmental regulatory agencies. Grantee will not further disturb the site of the discovered hazardous materials or hazardous wastes without the written permission of GRANTOR.
3. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
4. Throughout the term of this Site Access Agreement, GRANTEE shall notify the GRANTOR's Authorized Representative upon discovery of any noxious weed species found on the Premises and GRANTEE is responsible for immediate control and eradication. GRANTEE shall consult with and obtain approval from the GRANTOR's Authorized Representative for acceptable weed control methods such as mechanical or chemical, or by providing funds for treatment.

The use of any pesticides, rodenticides, fungicides, or herbicides within the Premises shall be in conformance with all applicable Federal, state and local laws and regulations. Prior to the use of pesticides, rodenticides, fungicides, or herbicides, GRANTEE shall obtain from the GRANTOR's Authorized Representative written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the GRANTOR's Authorized Representative. Emergency use of pesticides, rodenticides, fungicides, or herbicides shall be approved in writing by the GRANTOR's Authorized Representative prior to such use.

1. The GRANTEE will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the GRANTEE's activities, the GRANTEE shall be liable to restore the damaged resources and mitigate any impacts resulting from the damage.
2. The United States retains and reserves a right of access on, over, and through the Premises, to enter upon the Premises in any case in which an environmental response or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response or corrective action is on the Premises or on adjoining or nearby lands. Such right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws, including, with limitation, Environmental Laws. In exercising such right of access, the United States shall provide the Grantee with reasonable notice of its intent to enter upon the Premises and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. In exercising its rights hereunder, the United States shall use reasonable means to avoid and to minimize interference with the GRANTEE's use of the Premises. Government access and other actions hereunder shall be at the expense of the Government, unless such access or other actions are necessitated by the actions of the GRANTEE, its successors and assigns, its employees, agents, contractors, licensees, and invitees.
3. The GRANTEE shall maintain, in a manner satisfactory to GRANTOR, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the GRANTEE during the term of this Site Access Agreement, and the GRANTEE shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of the GRANTEE shall be corrected by the GRANTEE as directed by GRANTOR.

30. Historic Preservation

The GRANTEE shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, the GRANTEE shall immediately notify GRANTOR and protect the site and material from further disturbance until GRANTOR gives clearance to proceed.

1. GRANTOR shall provide for a qualified, designated observer to be present during the initial construction phase for all grading, digging, trenching and excavating activities in the Premises, as determined necessary by GRANTOR GRANTEE shall suspend all operations in the immediate area of any cultural and/or paleontological resource (historic or prehistoric site or object) discovered on Federal land until written authorization to proceed is issued by the GRANTOR's Authorized Representative. An evaluation of the discovery will be made by the GRANTOR to determine appropriate actions to prevent the loss of items of significant cultural or scientific value. Any decision as to proper mitigation measures will be made by the GRANTOR after consulting with the GRANTEE.
2. GRANTOR and GRANTEE shall discuss in good faith the impact on GRANTEE’s performance obligations and responsibility for costs resulting from compliance with this Section.

31. Environment, Safety and Health Management

1. GRANTEE warrants that its designated environment, safety and health (ES&H) manager is knowledgeable in applicable federal, state and local ES&H requirements. GRANTEE warrants that its contractors and employees are trained in, familiar with, and comply with GRANTEE’s ES&H policies, procedures and standards.
2. GRANTEE shall notify the GRANTOR's Authorized Representative in writing within two hours of any employee injuries/illnesses at the Premises requiring medical attention in excess of first aid, or incidents at the Premises that result in damage to equipment or facilities, or threats or impacts to the environment.
3. GRANTEE shall suspend operations at the Premises and immediately notify the GRANTOR's Authorized Representative in writing if conditions are encountered that present a possible ES&H exposure (e.g., imminent danger, suspected hazardous materials, accidental release of hazardous material, possible archaeological sites). GRANTEE must inform all its workers and contractors that they have stop work authority when these conditions are encountered. A hazard assessment must be completed and appropriate controls identified to mitigate the identified hazard(s) prior to beginning work.
4. GRANTEE shall conduct activities on the Premises within the scope of any environmental assessments and determinations made by GRANTOR pursuant to the National Environmental Policy Act (NEPA). GRANTEE shall not initiate any construction or take any other irreversible actions until GRANTOR issues a NEPA clearance. If changes are anticipated to the scope of activities as described in the applicable NEPA documents and determinations, or if the scope of activities is desired to be expanded, GRANTEE has a continuing notification obligation, and shall notify GRANTOR of any proposed changes. Requirements for additional NEPA documents or determinations shall be determined on a case-by-case basis. GRANTEE shall provide information as requested to support any future NEPA determinations.
5. GRANTEE shall take all necessary and reasonable safety precautions with respect to providing the System installation, operation and maintenance, and ensuring that work shall comply with all applicable laws pertaining to the health and safety of persons and real and personal property. GRANTEE shall comply with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance, if these State standards are more stringent than Federal standards for similar projects.
6. GRANTEE shall provide an easily accessible bulletin board or other suitable information center on the Premises, ensuring that employees know its location, and posting the following as a minimum:
   1. Emergency telephone numbers.
   2. GRANTEE's project management and execution plan or a location where it may be accessed.
   3. Any other posting required by law.

32. Introduction, Management, and Disposal of Fuels, Hazardous or Toxic Materials, and Wastes

1. GRANTEE shall limit the introduction of fuels and hazardous or toxic materials to that required for daily on-site use. GRANTOR shall be provided with written notification prior to these materials being brought onto the Premises. The notification shall include the materials, quantities, intended use and material safety data sheets. All such materials will be stored in approved containers in compliance with federal, state, and local regulatory requirements. Any spills of hazardous, toxic or petroleum-based materials shall be reported immediately to the GRANTOR's Authorized Representative. GRANTEE is responsible for clean-up, disposal and appropriate remediation actions resulting from any spills, leaks or accidental discharges, resulting from its acts or failure to act. These activities must be coordinated with the GRANTOR's Authorized Representative.
2. GRANTEE shall minimize all wastes produced and shall remove these wastes from the site promptly at their own expense, in compliance with federal, state, and local regulatory requirements.

33. Permits and Responsibilities

Except for the required Storm Water Discharge Permit which shall be obtained by GRANTOR, GRANTEE, without expense to GRANTOR, shall be responsible for obtaining any necessary licenses and permits.

34. Notices of Violation or Alleged Violations, Fines, and Penalties

1. GRANTEE shall immediately notify the GRANTOR's Authorized Representative, in writing, of any notice it may receive regarding Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with GRANTEE's installation, operation, and maintenance of the System.
2. GRANTEE shall submit for GRANTOR approval their proposed actions to correct the conditions that resulted in the NOV/NOAV, consistent with the issuing authority’s regulations. Upon GRANTOR approval, these actions shall immediately be implemented by GRANTEE at their expense to the reasonable satisfaction of GRANTOR.
3. GRANTEE shall accept all responsibility for valid fines and penalties issued by federal, state, or local regulators resulting from the actions of GRANTEE, its agents, representatives, or invitees for acts or failures to act after the effective date of this Site Access Agreement.

35. Nondiscrimination

In the construction, operation, maintenance, and termination of the System authorized by this Site Access Agreement, the GRANTEE shall not discriminate against any person or persons, or applicant for employment because of race, creed, color, sex, or national origin. All subcontracts shall include an identical provision.

36. Miscellaneous

1. Incorporation By Reference. Certain provisions of the ESPC ESA are incorporated by reference herein, specifically, *<list provisions>*.
2. Definitions. Any capitalized terms used herein and not expressly defined herein shall be given the meanings specified in the ESPC ESA.

37. Recordation

GRANTEE shall be responsible to record this Site Access Agreement, if required, in the Office of the Recorder of Deeds, (County), and to provide GRANTOR with a recorded copy.

38. Amendment

This Site Access Agreement may not be amended or superseded except by an agreement in writing executed by the GRANTOR and the GRANTEE. Provided, however, if minor technical adjustments or revisions to the legal descriptions or depictions of the Premises are necessary after the execution of this Site Access Agreement and provided the GRANTOR and GRANTEE hereto mutually agree in writing as to such revisions, then revised legal descriptions and depictions may be attached to this Site Access Agreement and this Site Access Agreement shall be re-recorded with the new exhibits, and in such event formal amendment of this Site Access Agreement shall not be necessary.

If circumstances arise under which an amendment to or modification of this Site Access Agreement would be appropriate, the GRANTOR and the Grantee shall use reasonable efforts to cooperate in amending this Site Access Agreement. All amendments and modifications requested by the Grantee hereunder shall be at the sole cost and expense of the Grantee.

### Exhibits

Exhibit A GRANTOR Acknowledgement and Confirmation

Exhibit B Surveyor’s Legal Description of Premises

Exhibit C Mandatory GRANTEE Covenants

IN WITNESS WHEREOF, the GRANTOR has caused this Site Access Agreement to be executed it its name by *<agency leadership>* on *<date>*:

**Department of *<agency name>***

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*<Name>*

*<Title – official with real estate approval authority>*

### ACCEPTANCE

**WITNESS** the signature of the GRANTEE this *<day month, year>*, and agrees to all acceptance and approval of this Site Access Agreement for itself, its successors and assignees the terms and conditions contained therein.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*<Name, title>*

Contractor

NOTARY Public

**STATE OF** \_\_\_\_\_\_\_\_\_ )

**COUNTY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_** )

### Exhibit A – GRANTOR Acknowledgement and Confirmation

The PV system is considered to be personal property and not a fixture.

NOTARY Public

**STATE OF** \_\_\_\_\_\_\_\_\_ )

**COUNTY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_** )

### Exhibit B– Surveyor’s Legal Description of A Premise

### Exhibit C - Mandatory GRANTEE Covenants