

# DRAFT AIA® Document A141® – 2014

## Exhibit B

### *Insurance and Bonds*

#### for the following PROJECT:

*(Name and location or address)*

«Solar Photovoltaic (PV) System Project»  
«Hawaii Convention Center ("HCC")  
1801 Kalakaua Avenue  
Honolulu, Hawaii 96815»

#### THE MANAGER:

*(Name, legal status and address)*

«AEG Management HCC, LLC a Delaware Limited Liability Company»  
«1801 Kalakaua Avenue»  
«Honolulu, Hawaii 96815»

#### THE DESIGN-BUILDER:

*(Name, legal status and address)*

«TBD»  
«TBD»  
«TBD»

#### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Manager and the Design-Builder (hereinafter, the Agreement), dated the «TBD» day of «TBD» in the year «TBD».

*(In words, indicate day, month and year.)*

#### TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 MANAGER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE B.1 GENERAL

The Manager and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

#### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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at its own expense, insuring the Design-Builder, its employees, agents and designees, until termination of this Agreement and for such additional periods as may be specified herein with insurance companies admitted or authorized to do business in the State where the Project is located as required by law. The Design-Builder shall cause its consultants, subconsultants and agents to maintain equivalent insurance coverages for the services provided by such third party.

**§ B.2.1.1** Commercial General Liability with policy limits of not less than **«one million dollars»** (\$ **«1,000,000»**) for each occurrence, two million dollars (\$2,000,000) general aggregate and **«two million dollars»** (\$ **«2,000,000»**) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

Commercial General Liability insurance on a per occurrence basis, shall include: (i) Broad form property damage; (ii) Contractual liability insurance, as part of the Commercial General Liability policy, insuring the Design-Builder's liabilities assumed under this Contract, including indemnification obligations under Section 3.1.14 of the AIA A141-2014; and (iii) a follow form umbrella or excess liability with a limit of **«five million dollars»** (\$**«5,000,000»**).

Products and Completed Operations with policy limits of not less than **«two million dollars»** (\$**«2,000,000»**) for each occurrence and **«five million dollars»** (\$**«5,000,000»**) in the aggregate for products and complete operations.

**§ B.2.1.2** Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than **«one million dollars»** (\$ **«1,000,000»**) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Automobile Liability insurance shall include coverage for automobile contractual liability.

**§ B.2.1.3** The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in not less than five million dollars (\$5,000,000.00) and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ B.2.1.4** Workers' Compensation at statutory limits and requirements of the State where the Project is located.

**§ B.2.1.5** Employers' Liability with policy limits as provided below:

**«Employers' Liability with policy limits not less than «one million dollars» (\$ «1,000,000») each accident, «one million dollars» (\$ «1,000,000») each employee, and «two million dollars» (\$ «2,000,000») policy limit.**

Employers' Liability insurance shall also include a Waiver of Subrogation in favor of AEG Management HCC, the Hawai'i Tourism Authority, ASM Global, and the State of Hawai'i, Anschutz Entertainment Group (AEG) and each of its and their respective boards, commissions, agents, Managers, members, shareholders, directors, officers, servants, employees, subsidiaries, and affiliates (hereinafter referred to as "Company Indemnitees"), unless not permitted by applicable law. The Workers' Compensation and Employer's Liability policy shall provide a waiver of subrogation in favor of Manager and any other entity or individual required by the Contract. Design Builder waives all rights against Manager, and their respective affiliates, agents, officers, directors and employees to the extent of any damages covered by such policy obtained by Design-Builder pursuant to this paragraph.»

**§ B.2.1.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than **«two million dollars»** (\$ **«2,000,000»**) per claim and **«two million dollars»** (\$ **«2,000,000»**) in the aggregate.

**§ B.2.1.7** Pollution Liability covering performance of the Work, with policy limits of not less than **«one million dollars»** (\$ **«1,000,000»**) per claim and **«one million dollars»** (\$ **«1,000,000»**) in the aggregate.

**§ B.2.1.7.1** The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than «three million dollars» (\$ «3,000,000») per claim and «three million dollars» (\$ «3,000,000») in the aggregate.

**§ B.2.1.8** The Design-Builder shall provide written notification to the Manager of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.2.1.9 Additional Insured Obligations.** To the fullest extent permitted by law, AEG Management HCC, Hawai'i Tourism Authority, ASM Global and the State of Hawai'i shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability for claims caused in whole or in part by the Design-Builder's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Manager's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

**§ B.2.1.10 Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Manager evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Manager's written request. Upon Manager's request, true and correct copies of the insurance policies along with original copies of the amendatory riders to any such policies for Manager's approval. Each and every policy shall provide, by endorsement or policy provision, that the insurer will not terminate coverage or fail to be renewed without first mailing written notice of such action at least ten (10) days prior for non-payment of premium or forty-five (45) days for any other reason prior to such termination or lapse to the Manager. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Manager and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.1.11** The policies shall be written on an occurrence basis (or in the case of personal injury and advertising injury coverage, an offense basis). Carriers furnishing such insurance shall be required to waive all rights of subrogation against Manager, its officers, agents, employees and other contractors, consultants, subconsultants and Subcontractors.

Design-Builder shall orally report promptly to Manager and promptly confirm to Manager in writing, upon Design-Builder becoming aware of any injury, loss, or damage incurred by Design-Builder or its contractors, consultants, Subcontractors, agents and assignees in connection with the Project, or upon Design-Builder's receipt of such claim by a third party, or upon Design-Builder becoming aware of any occurrence that Design-Builder believes may give rise to such claim.

Design-Builder shall include Manager, and any subsequent Manager of or lender to the Project (collectively referred to as the "Manager Related Parties") as additional insureds on a primary and noncontributory basis on the Commercial General Liability policy, and on the Business Auto policy, and on all Umbrella policies (if any). If a separate policy is obtained for Products/Completed Operations, Manager will also be named as an additional insured on it.

**§ B.2.1.12** If the Design-Builder fails to furnish and maintain the insurance required by this Agreement, the Manager may purchase such insurance on behalf of the Design-Builder, and the Design-Builder shall pay the cost thereof to the Manager (or Manager shall be entitled to offset such costs from amounts due Design-Builder hereunder) and Design-Builder shall provide any information needed to obtain such insurance.

**§ B.2.1.13 Consultant Insurance.** Design-Builder shall cause each of its consultants of every tier to purchase and maintain insurance of the type specified above and to otherwise comply with the insurance requirements set forth above, except that Commercial General Liability insurance shall be at least Two Million Dollars (\$2,000,000) each

occurrence and general aggregate, and Professional Liability Insurance shall be at least Two Million Dollars (\$2,000,000). When requested by Manager, Design-Builder shall furnish copies of certificates to Manager evidencing such coverage for each consultant of any tier. Nothing in this section shall limit Design-Builder's indemnification requirements to Manager under this Agreement.

§ **B.2.1.14** Design-Builder shall and hereby does subordinate all of its lien rights and shall ensure that all of its consultants of every tier shall subordinate all of their lien rights, to the lien of the mortgage(s) relating to this Project held by any of Manager's lender(s) for the Project, their successors and assigns. Any consultants which refuse to so subordinate their lien rights must be specifically approved in advance and in writing by Manager. Design-Builder shall and Design-Builder shall ensure that all of its consultants of every tier shall, if requested by Manager, execute an agreement, in form and substance satisfactory to Manager, so subordinating lien rights to the interests of Project lender(s).

§ **B.2.1.15** All of the insurance in this Article shall be subject to the following terms, conditions and endorsements.

§ **B.2.1.15.1 Insurer.** The insurance shall be purchased from a company with an "A-IX" or better rating from A.M. Best Company, where said insurance company is both lawfully able to provide insurance in the State of Hawaii and that is satisfactory to the Manager.

§ **B.2.1.15.2 Additional Insureds Endorsements.** All insurance, except the workers compensation and professional liability insurance, shall include the Company Indemnitees as additional insureds under ISO Form CG 2010 and Form CG 2037 or their equivalents. These endorsements shall apply without regard to other provisions of this Agreement.

§ **B.2.1.15.3 Primary Insurance.** The commercial general liability insurance and the automobile liability insurance to be carried by the Design-Builder shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by the Manager regarding the Work under this Agreement.

§ **B.2.1.15.4 Severability of Interest.** The insurance shall include a severability of interest clause for all named insureds and additional insureds.

§ **B.2.1.15.5 Duration.** Coverage shall be maintained, without interruption, from the date of commencement of the Design-Builder's Services under this Agreement and shall continue for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. The insurance obligations shall survive the expiration or termination of this Agreement.

§ **B.2.1.15.6 Notice of Cancellation, Etc.** The Design-Builder's insurer shall give the Manager immediate written notice of any cancellation in accordance with the policy terms but shall provide at least 10 days' written notice for non-payment of premium. The Design-Builder shall be required to immediately notify Manager of any termination, of coverage or if its coverage no longer meets the requirements of this Agreement by registered or certified mail, return receipt requested.

§ **B.2.1.15.7 Defense.** The insurance obtained by the Design-Builder, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

§ **B.2.1.15.8 Delivery of Certificates and Policies.** Original certificates of insurance and all requested endorsements, in a form acceptable to the Manager, must be filed with the Manager prior to commencement of the Design-Builder's Services. The Design-Builder's certificate of insurance shall be endorsed as follows: "The Company Indemnitees (as defined in Section B.2.1.5) are named as additional insureds for all insurance except the workers compensation and the professional liability insurance. This insurance is primary to and non-contributing with any and all insurance of the Company Indemnitees." The Certificate Holder box shall identify the name and address of the Manager listed on the first page of this Agreement. With respect to insurance coverage required to remain in force after final payment, the Design-Builder shall annually submit certificates of insurance evidencing continuation of such coverage. The Design-Builder shall submit copies of the policies within seven days following a request from the Manager.

**§ B.2.1.15.9 Lapse in Insurance.** Failure to maintain insurance shall constitute a material breach of this Agreement. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Manager receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Manager may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**§ B.2.1.15.10 Subcontractors.** If the Design-Builder subcontracts a third-party sub-consultant to complete any portion of this Agreement, the Design-Builder shall ensure that the sub-consultant shall provide all necessary insurance and shall name the Company Indemnities and the Design-Builder listed as additional insureds. The Design-Builder shall provide such insurance documents to the Manager on behalf of sub-consultant.

**§ B.2.1.15.11 Non-Waiver.** PERMITTING THE DESIGN-BUILDER TO START WORK OR RELEASING ANY PAYMENT PRIOR TO COMPLIANCE WITH THESE REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER THEREOF.

**§ B.2.1.15.12** The Design-Builder and the Manager waive all rights of recovery against each other and the Company Indemnitees for any losses covered by insurance with the exception of the Professional Liability policy. The Design-Builder agrees to defend and indemnify the Indemnitees from all such subrogation claims.

**§ B.2.1.16 Builders Risk Insurance.** Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Design-Builder shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Manager, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Manager has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Manager shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

**§ B.2.1.16.1** The insurance required under Section B.2.1.16 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

**§ B.2.1.16.2** If the insurance required under Section B.2.1.16 requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

**§ B.2.1.16.3** The insurance required under Section B.2.1.16 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ B.2.1.16.4** Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.2.1.16 have consented to such partial occupancy or use by endorsement or otherwise. The Manager and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ B.2.1.17 Loss of Use Insurance.** The Design-Builder shall purchase and maintain insurance to insure the Manager against loss of use of the Manager's property due to fire or other hazards, however caused.

**§ B.2.2 Performance Bond and Payment Bond**

The Manager shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment & Performance Bond	\$Contract Sum

The Manager shall be named as obligees on all bonds. Bonds to be provided by the Design-Builder, Subcontractors, and sub-subcontractor(s) must be conditioned (1) that prompt payment shall be made for all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the Work on any phase of the Project; and (2) as guarantee of the obligation to complete the Project as provided in this Agreement. The dollar amount of such bonds shall be modified, as needed, to reflect any approved change orders that modify the total value of the Project or part of the Project. Failure to comply with the requirements of this section shall be legal grounds under this Agreement for Work to be ordered to cease or to be restricted, as deemed appropriate by the Manager, until compliance is achieved, and any unpaid claims are resolved to the reasonable satisfaction of the Manager.

**§ B.2.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE B.3 MANAGER'S INSURANCE**

**§ B.3.1 Manager's Liability Insurance**

The Manager shall be responsible for purchasing and maintaining the Manager's usual liability insurance.

**§ B.3.2 Property Insurance**

**§ B.3.2.1** Intentionally deleted.

**§ B.3.2.2** Intentionally deleted.

**§ B.3.2.3** Intentionally deleted.

**§ B.3.2.4** Intentionally deleted.

**§ B.3.2.5** If during the Project construction period the Manager insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Manager shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ B.3.2.6** Before an exposure to loss may occur, the Manager shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Manager shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Manager shall provide such written notice within five (5) business days of the date the Manager is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.3.2.7 Waivers of Subrogation.** The Manager and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and Subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their Subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Manager as

fiduciary. The Manager or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the Subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Manager's property insurance shall be adjusted by the Manager as fiduciary and made payable to the Manager as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and Subcontractors in similar manner.

**§ B.3.2.9** If required in writing by a party in interest, the Manager as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Manager's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Manager shall deposit in a separate account proceeds so received, which the Manager shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Manager and Design-Builder. If after such loss no other special agreement is made and unless the Manager terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

**§ B.3.2.10** The Manager as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Manager's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Manager and Design-Builder as the method of binding dispute resolution in the Agreement. If the Manager and Design-Builder have selected arbitration as the method of binding dispute resolution, the Manager as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«N/A»