

# REQUEST FOR INFORMATION “RFI SOLAR - MTA”

## 1 INTRODUCTION

The New York Power Authority ("NYPA" or the "Authority") is the nation's largest state-owned power supplier, providing low-cost electricity to government agencies, municipal electric systems, rural electric cooperatives, and to private utilities for resale—without profit—to their customers across New York State. NYPA operates 18 generating facilities and more than 1,400 circuit-miles of transmission lines. NYPA is also a national leader in promoting energy efficiency and the development of clean and renewable energy technologies, committing over \$100 million a year to energy services.

As part of its commitment to the environment and in support of New York State's clean energy goals, NYPA, on behalf of the Metropolitan Transportation Authority and its operating agencies ("MTA"), is interested in purchasing up to 6 MW of power and related energy produced by solar photovoltaic generating systems ("SPGS") to be installed on the roofs of certain facilities owned or leased by the MTA, in 2 MW phases commencing summer 2009 through 2011.

It is anticipated that the following MTA operating agencies will have facility roofs that are suitable for these purposes: New York City Transit Authority ("MTA NYCT"), Staten Island Rapid Transit Operating Authority ("MTA SIRR"), Long Island Rail Road ("MTA LIRR"), Metro North Railroad ("MTA MN"), Triborough Bridge and Tunnel Authority ("MTA B&T"), Metropolitan Suburban Bus Authority ("MTA LIB"), and MTA Bus ("MTA Bus"), (individually and collectively "MTA" or "Host").

All SPGS equipment installed at Host sites will be owned and operated by the solar provider ("Seller"), who will be responsible for all SPGS costs associated with design, permitting, equipment, materials, and labor, including installation and operation and maintenance. The capacity and energy produced by such SPGS will be sold to NYPA ("Buyer"), as set forth in a solar power purchase agreement ("SPPA") to be executed between NYPA and the Seller.

Prior to issuing a formal Request for Proposals (RFP) for solar power, NYPA is issuing this Request for Information (RFI). The purpose of the RFI is to solicit information from the solar power industry in order to prepare an RFP with appropriate terms, conditions and other information to encourage the submission of high quality proposals from capable solar power developers. **Responses are due by December 12, 2008. Please direct all questions about this RFI and all responses to this RFI to:**

John Markowitz

Engineer  
New York Power Authority  
123 Main Street  
White Plains, NY 10601  
Fax: 914-681-6860  
[john.markowitz@nypa.gov](mailto:john.markowitz@nypa.gov)

NYPA will entertain telephone discussions with regard to any sensitive information. However, NYPA prefers to receive as much information in writing as possible, so that it can be shared accurately with those who are developing the RFP.

Neither NYPA nor the MTA will be responsible for any costs or expenses incurred in preparing and submitting information to this RFI. All material submitted will become the property of NYPA. Submitters are cautioned to clearly label as proprietary and confidential any specific information or other material that is considered to be confidential. NYPA and MTA are subject to the New York State Freedom of Information Law ("FOIL") which provides, as a general rule, that NYPA and MTA records are accessible to the public, subject only to specific exceptions which include a trade secret exception. If NYPA or MTA were to receive a FOIL request, the submitter would be notified, and NYPA and the MTA, to the fullest extent permitted by FOIL, would seek to deny access to such marked confidential proprietary information.

## **2 KEY ITEMS FOR RESPONDER FEEDBACK**

NYPA seeks information from entities that are knowledgeable and experienced in the successful design, installation, operation and maintenance of SPGS. Information, feedback, clarifying comments, questions and specific suggestions from these entities on any and all of the following sections is welcome. These responses will help NYPA develop an RFP that addresses key concerns and facilitates high quality proposals.

Responders are requested to provide a point of contact and background information about their company or organization and whether or not they intend to respond to the subsequent RFP.

### **2.1 SPPA Build-out and Pricing**

NYPA and MTA performed an evaluation of MTA facilities and identified six initial sites ("Host Sites") for implementation of SPGS projects in 2009 under an SPPA with a combined capacity of approximately 2 MW. These locations were chosen based on availability of roof space, electric load and age of roof membrane, and are included in *Appendix A – RFI Host Site List*, attached. The Host Site list is subject to change. Additional MTA sites for the implementation of approximately 2 MW of SPGS capacity in 2010 and an additional 2 MW in 2011 will be identified in cooperation with the Seller(s). These sites are to include new MTA facilities which

are scheduled to be completed within that time frame as well as existing MTA facilities currently undergoing roof replacement. Additional MTA SPGS project sites may be identified during the 2010 and 2011 phases that would utilize ground mounted SPGS, carport SPGS and/or platform canopy SPGS.

NYPA intends to request pricing broken down by fixed monthly capacity price [\$/kW-mo] and fixed annual price of energy delivered each month [\$/MWh], for SPPA term of 5, 10, 15 and 20 years for each of the following:

- 2.1.1 Firm pricing for the first set of Host Sites, representing approximately 2 MW of SPGS capacity to be installed with a commercial operation date (“COD”) of 2009. NYPA is interested in receiving comments on the Host Site list including what Host Site information should be included in the RFP, if site inspections will be required as part of the RFP process and what proposers will want to see at each Host Site as part of the site inspection.
- 2.1.2 Pricing for the 2010 and 2011 phases for each of four SPGS project increments; 100 kW, 250 kW, 500 kW and 1 MW per site. NYPA is interested in receiving comments as to how pricing is estimated for the sites yet to be identified, what variables and assumptions should be allowed in setting the prices and how final pricing should be established once the sites are identified.

NYPA intends to allow for proposal terms of 5, 10, 15 or 20 years for one, multiple or all sites for years 2009, 2010 and 2011, or various term and pricing proposals for each site. NYPA is willing to consider a range of payment structures, including buyout terms, and is interested in receiving information about various options recommended by responders as well as a summary of the rationale generally used to justify indexed pricing.

*Appendix B - NYPA Power Purchase Agreement (“PPA”)* is attached for reference. NYPA intends to include a PPA as part of the RFP. NYPA is seeking comments on how the requirements of this PPA document would affect proposals for an SPPA. NYPA is also seeking suggestions on specific changes to this document which may result in a more favorable SPPA, as it is NYPA’s preference not to accept substantive changes to the final PPA from winning proposer(s).

## **2.2 Other Pricing Assumptions**

- 2.2.1 NYPA intends to request pricing with and without environmental attributes, i.e. the Renewable Energy Credits (REC), and with and without carbon credits. NYPA is interested in comments on how pricing with and without these attributes and credits will affect pricing.
- 2.2.2 NYPA is interested in receiving clarification on how clean energy tax credits may be applied to SPGS installed on MTA property, how these tax credits will

impact SPPA pricing, and any potential circumstances which could jeopardize the tax credits and any associated liabilities.

- 2.2.3 NYPA shall require that pricing reflect the use of prevailing wages pursuant to New York State Labor Law Section 220 for all on-site labor in implementation of all SPGS projects.
- 2.2.4 Taxes and Permitting Fees: Generally, the MTA is exempt from all New York State and local taxes and the MTA does not pay any real estate taxes for sites owned by MTA or leased by MTA and used for transportation purposes. In addition: i) generally, MTA is exempt from local building codes, but complies with New York State and other applicable building codes and standards; ii) in some instances MTA voluntarily complies with local building codes; and iii) in general and subject to exceptions, the code compliance function normally performed by a local jurisdiction is performed by designated MTA Code Compliance staff.

MTA does not guarantee that a Proposer's installation at an MTA site will be exempt from local real estate or, if applicable, personal property taxes. If such taxes are assessed, Proposer will be responsible for and pay all such taxes. Proposals should include: i) price estimates for sites located on real property that is exempt from such taxes; and ii) an assessment of the likelihood that such taxes will be imposed on its installations and the estimated cost thereof. A Proposer should set forth in its proposal its assumptions about how such compliance would affect SPGS costs and schedule.

- 2.2.5 In the event that a Site is identified by a proposer as potentially suitable but for the condition or age of the roof, NYPA may request that Proposers include a plan and methodology for performing roof repair and/or replacement work, as well as the costs of such work, including materials and labor.
- 2.2.6 NYPA generally requires a form of performance and payment bond or letter of credit to insure timely completion of projects. NYPA is interested in receiving comments on how this requirement may affect proposals and pricing.

### **2.3 Occupancy Agreement and Liability**

*Appendix C - Current MTA Occupancy Agreement* is attached for reference and provides the existing terms and conditions defining the installation, operation and maintenance of any equipment by a third party on MTA property. NYPA is seeking comments on how the requirements of this document would affect proposals for an SPPA. NYPA is also seeking suggestions on specific changes to this document which may result in a more favorable SPPA. Note, a Seller that enters into the occupancy agreement will not be obligated to pay license fees or rent to MTA.

NYPA and MTA are interesting in receiving comments on how Host imposed reductions in SPGS performance should be addressed under various circumstances, including lost revenue, additional labor costs, early termination (as well as a buy-out option) buy out, and their remedies, and specifically how the RFP (pricing, outage times) should be structured to adequately address this. A Host imposed reduction may entail a portion of an SPGS being put out of operation, or asking that the SPGS be moved or removed permanently, or on a temporary basis.

## **2.4 Technical Specifications**

For the first set of Host Sites with COD 2009, listed in Appendix A, NYPA intends to require that proposals submitted in response to the RFP include:

- 2.4.1 Performance: for each Host Site describe the performance of the SPGS, including: (a) anticipated monthly energy and peak power values for the duration of your proposed term(s); (b) identification and discussion of any variables identified that would affect your response to (a), and the impact thereof, such as system degradation, scheduled and unscheduled system downtime, and (c) where applicable, your proposed approaches to minimizing the adverse impact of the variables.

Note, listing in the Host Site List does not constitute a warranty or representation by NYPA or MTA that such site is suitable for a proposer's purposes. NYPA intends to provide a site walkthrough of each Host Site and require that the Proposer be responsible for evaluating and determining the suitability of a specific site for installation of the SPGS based upon its own independent investigation. A proposer may submit a request for additional information about a site to the NYPA point of contact. The Host Site List is subject to change. As part of this RFI NYPA is interested in feedback on how multiple site inspections should be coordinated, what facility information should be provided and which parts of each facility should be inspected. In addition, NYPA is interested in feedback about the apparent suitability of the sites listed in Appendix A for installation of an SPGS.

- 2.4.2 Design and Schedule: *Appendix D – Implementation Scope of Work* is attached for reference. NYPA intends to include a photo-voltaic (PV) implementation scope of work similar to Appendix D in the RFP. Please comment on this document highlighting any concerns about how this document would affect proposals.
- 2.4.3 A full and complete description of proposer's operation and maintenance plan (e.g., company and/or individuals involved; how such operation will be performed; type of access required to the Site; anticipated role of MTA in operation and maintenance phase)

- 2.4.4 Detailed plans for interconnection, net metering and billing. NYPA intends to require that the Seller be responsible for all interconnection costs, requirements and risks and for completing all requisite interconnection arrangements with the applicable transmission company, Consolidated Edison Company of New York, Inc. (“Con Edison”) or the Long Island Power Authority (“LIPA”). Con Edison’s interconnection standards and guidelines are available at [www.conedison.com](http://www.conedison.com); LIPA’s are available at [www.lipower.org](http://www.lipower.org). NYPA seeks comments on this requirement and also on a potential requirement for the Seller to identify any impact to the Host Site’s existing electric utility bills incurred as a result of the expected operation of the SPGS.

For sites that will be identified in partnership with the winning proposer and NYPA and MTA to be implemented in 2010 and 2011, NYPA intends to require that proposals include the following:

- 2.4.5 Performance for each of four SPGS project increments; 100 kW, 250 kW, 500 kW and 1 MW per site, including: (a) anticipated monthly energy and peak power values; (b) identification and discussion of any variables identified that would affect your response to (a), and the impact thereof, such as site specific location/condition, system specifications, system degradation, weather, and scheduled and unscheduled system downtime, and (c) where applicable, your proposed approaches to minimizing the adverse impact of the variables.

### 3 **ADDITIONAL ITEMS**

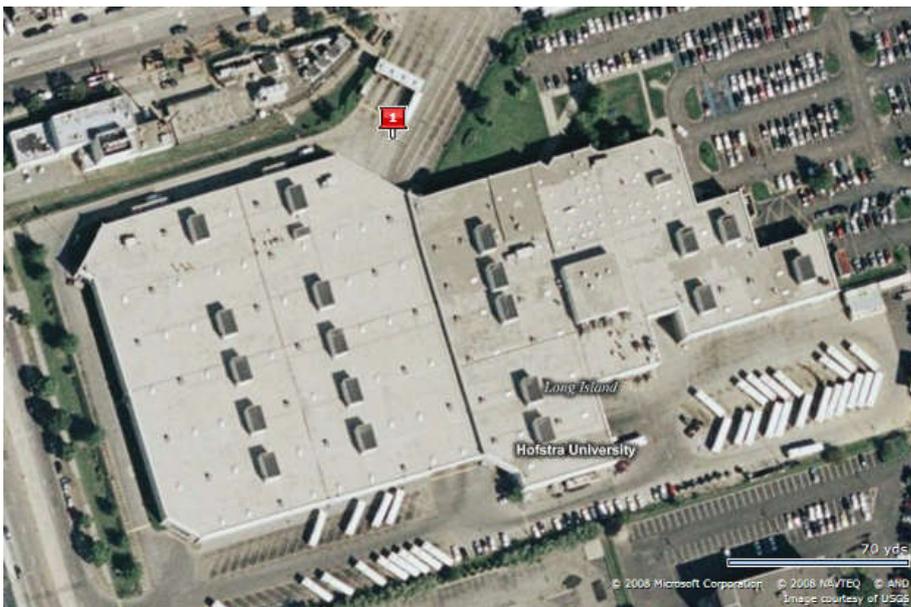
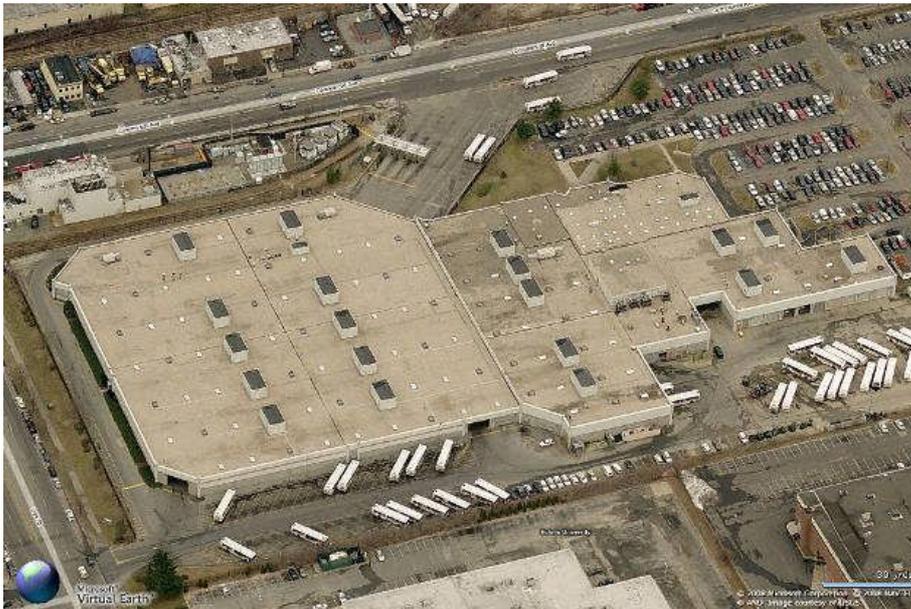
- 3.1 NYPA and the MTA are interested in learning about solar PV technologies that may be suitable for installation at MTA facilities. These technologies may be installed as part of a SPPA or under an equipment purchase contract only. Examples include technology that is specifically designed for use on railway platform canopies or bus shelters.
- 3.2 NYPA and MTA are interested in receiving information about the status of the solar power industry as it relates to availability of solar panels, inverters and qualified labor in order to complete the build-out plans of this initiative.

## Appendix A – RFI Host Site List

### First Phase of Installations

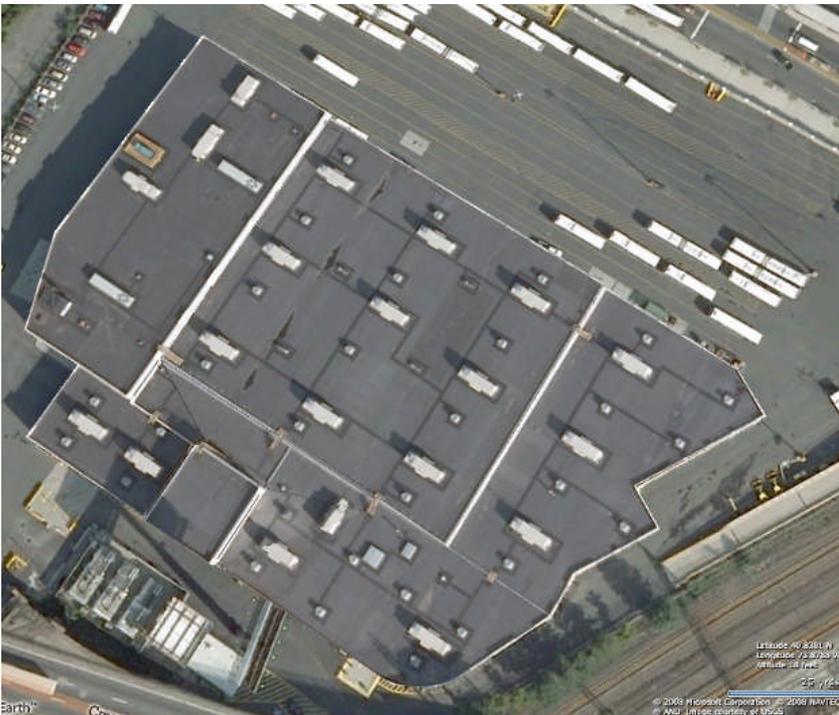
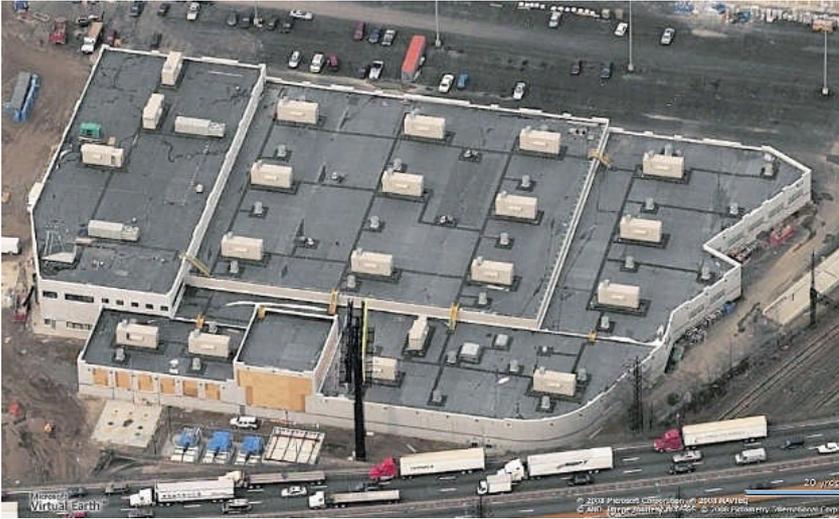
#### 1 – Long Island Bus: Mitchel Field

- Location: 700 Commercial Avenue, Garden City, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCP&cp=40.729348~-73.607476&style=h&lvl=16&tilt=-90&dir=0&alt=-1000&scene=21280031&phx=0&phy=0&phscl=1&encType=1>



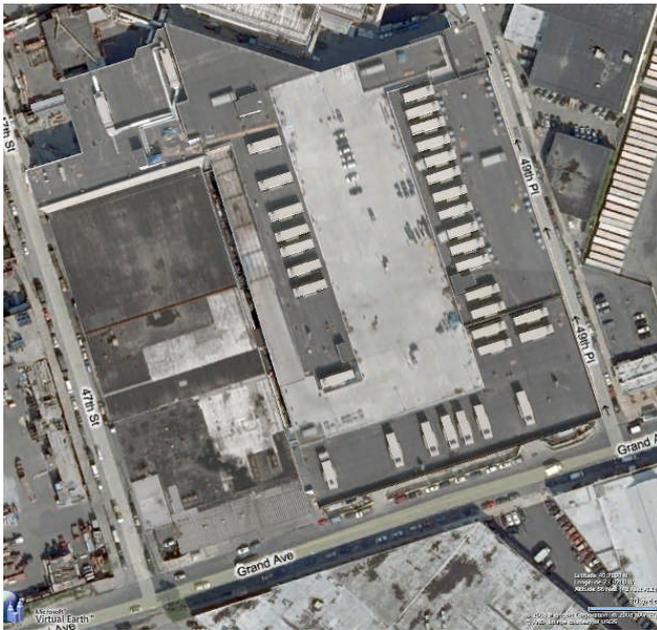
2 – New York City Transit, Department of Buses: West Farms

- Location: 1100 East 177<sup>th</sup> Street, Bronx, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCC&cp=40.838006~-73.877295&style=h&lvl=17&tilt=-90&dir=0&alt=-1000&scene=1576709&phx=0&phy=0&phscl=1&encType=1>



### 3 – New York City Transit, Department of Buses: Grand Avenue

- Location: 4900 Grand Avenue, Maspeth, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCC&cp=40.716808~-73.91991&style=h&lv=18&tilt=-90&dir=0&alt=-1000&scene=1793766&phx=0&phy=0&phscl=1&encType=1>



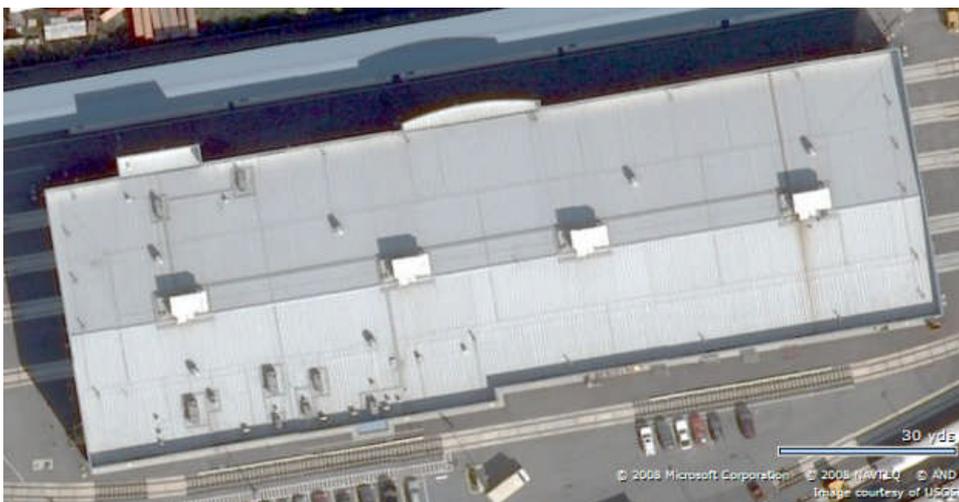
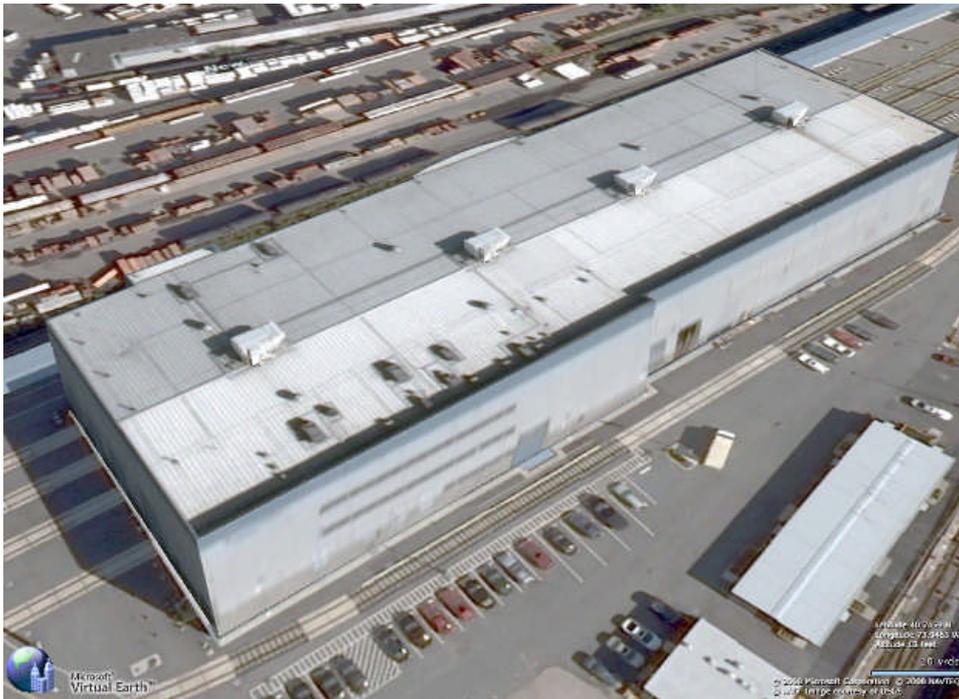
4 – New York City Transit, Department of Buses: 100<sup>th</sup> Street

- Location: 1552 Lexington Avenue, New York, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCC&cp=40.78783~-73.949436&style=h&lvl=18&tilt=-90&dir=0&alt=-1000&scene=1455370&phx=0&phy=0&phscl=1&encType=1>



5 – Long Island Rail Road: Arch Street

- Location: Arch Street (near Jackson Avenue and 46<sup>th</sup> Road), Long Island City, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCC&cp=40.742831~-73.948106&style=h&lvl=17&tilt=-90&dir=0&alt=-1000&scene=1652431&phx=0&phy=0&phscl=1&encType=1>



## 6 – Long Island Rail Road: Hillside

- Location: Liberty Avenue near 183<sup>rd</sup> Street and Jamaica Avenue, Hollis, NY
- <http://maps.live.com/default.aspx?v=2&FORM=LMLTCC&cp=40.706143~-73.776476&style=h&lvl=19&tilt=-90&dir=0&alt=-1000&scene=1869960&phx=0&phy=0&phscl=1&encType=1>



**NOTE:** Buildings on this list are assumed to have sufficient electrical load to for large PV systems without the need of net metering considerations.

**Solar Capacity  
and Energy  
Power Purchase  
& Sale  
Agreement**

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**SOLAR CAPACITY AND ENERGY POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This Solar Capacity and Energy Power Purchase and Sale Agreement (“Solar Agreement”) is made as of the following date: \_\_\_\_\_. The Solar Agreement, together with the exhibits, schedules and any written supplements hereto shall be referred to as the “Agreement.” This Agreement shall cover only the purchases and sales of Capacity, Energy, and Renewable Energy Certificates (“RECs”) from the Solar Generating Facilities (“SGF”), together referred to as “Solar Products”, executed in furtherance of the competitive bidding process dated [ \_\_\_\_\_ ]2008, by and through which the New York Power Authority may acquire Solar Products which has been generated from SGF owned or controlled by and through the (“Respondent’s Company Name”). The terms herein shall not replace, supersede or amend any prior or subsequent agreements for the purchase or sale of energy and/or any other commodity between the parties hereto. The Parties to this Solar Agreement are the following:

**Name:** (“Respondent’s Company Name”), a [Form of Entity] organized under the laws of the State of \_\_\_\_\_ (“Party A” or “Seller”)

**Name:** New York Power Authority (“NYPA”, “Party B”, or “Buyer”)

All Notices:

All Notices:

Street: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**

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Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



**Exhibit A - Solar Agreement Pricing Terms**

This Exhibit sets forth the pricing terms and payment computation for the purchase and sale of Solar Products under the Agreement.

**Exhibit B - Certificate and Assignment of Right Form**

This Exhibit sets forth the terms for the sale and transfer of all rights, titles, and interests in the RECs under the Agreement.

**Exhibit C - Eligibility and Requirements of the RPS Program-Solar**

This Exhibit describes the eligibility requirements for SGFs participating in the NYPA RPS Program-Solar.

**Exhibit D - Insurance Requirements**

This Exhibit provides NYPA's Insurance Requirements as it relates to this contract. These provisions must be met throughout the term of the Agreement.

**Exhibit E - Form of Seller Guaranty**

This Exhibit provides Form of Seller Guaranty.

**Exhibit F - Form of Seller Letter of Credit**

This Exhibit provides Form of Seller Letter of Credit.

**Exhibit G - SGF Construction Milestones**

This Exhibit describes the construction milestones necessary to achieve SGF COD.

**Exhibit H - Buyout Option**

This Exhibit describes the agreed to price for NYPA's buyout options set forth in Article 11.

**Exhibit I - Contract Energy Deliveries**

Sets forth the contracted energy deliveries projected from the SGF.

**Exhibit J - Minority And Women Owned Business Enterprise Procedures**

Sets forth the Minority and Women Owned Business Enterprise Goals and Procedures.

**Exhibit K - Interconnection Agreement**

The Exhibit contains the separately executed interconnection agreement with Con Edison or LIPA.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

**[“RESPONDENT’S COMPANY NAME”]**

**NEW YORK POWER AUTHORITY**

**Party A**

**Party B**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS

### GENERAL DEFINITIONS

**“Act” means the NYPA Act (Public Authorities Law of the State of New York [ADD SECTIONS]).**

**“Actual Eligible Production” means the amount of the electric energy produced, in MWh, by the Solar Generating Facility, during any period within the Delivery Period, measured at the Delivery Point.**

**“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.**

**“Agreement” has the meaning set forth in the Cover Sheet.**

**“Back-up Metering” is defined in Section 3.17.**

**“Bankrupt” means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.**

**“Business Day” means any Day except a Saturday, Sunday, or holiday defined by NERC. A Business Day shall open at 0800 and close at 1700 local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.**

***“Buyer” means the New York Power Authority.***

***“Interconnection Standards” means those standards for interconnecting with Con Edison’s electrical system that are set forth web site at [www.conedison.com](http://www.conedison.com).***

1.9 “Buyer’s Tariff” means that certain tariff entitled “New York Power Authority Tariff for Electrical Service”.

***“Capacity” means the capability to generate electrical power.***

***“Capacity Charge” has the meaning set forth in Exhibit A.***

***“Claiming Party” has the meaning set forth in Article 3.15.***

***“Claims” means all third party claims or actions, threatened or filed prior to or after the termination of this Agreement and, whether groundless, false, fraudulent or otherwise, that directly relate to this Agreement, and the resulting losses and damages, and reasonable expenses, attorneys’ fees, consultants’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed.***

***“COD Liquated Damages” has the meaning set forth in Article 3.4.***

***“COD Target Date” mean [DATE SPECIFIED BY SELLER].***

***“Commercial Operation Date or COD” has the meaning set forth in Article 3.3.***

***“Consents” means any approval, consent, permit, license, decree, certificate or other authorization that is required to own, construct, operate and maintain the SGF, which needs to be received from any Governmental Authority having jurisdiction, including all applicable environmental certificates, licenses, permits and approvals.***

***“Contract Capacity” means the amount of Capacity in MW from the Solar Generating Facility(ies) made available to Buyer by Seller as measured by the nameplate Capacity of the panels (individual or in aggregate) in each solar array as adjusted in accordance with Article 3.23.***

***“Contract Capacity for Year 1” is defined in Article 3.22(A).  
DELETE***

***“Contract Capacity for Year 2” is defined in Article 3.22(B).  
DELETE***

***“Contract Energy” means the amount of Energy measured in MWh produced by the Solar Generating Facility(ies) planned to be sold by Seller and purchased by Buyer as set forth in Exhibit I.***

***“Contract RECs” means the amount of RECs measured in MWh produced by the Solar Generating Facility(ies) planned to be sold by Seller and purchased by Buyer as set forth in Exhibit I.***

***“Contract Capacity Price” means the price in \$/kW-mo set forth in Exhibit A to be paid by Buyer to Seller for the purchase of the Contract Capacity.***

***“Contract Energy and REC Price” means the price in \$/MWh set forth in Exhibit A to be paid by Buyer to Seller for the purchase of the Delivered Energy and Delivered RECs.***

***“Contract Price” means the price in \$U.S. to be paid by Buyer to Seller for the purchase of Solar Products as set forth in Exhibit A.***

***“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement or entering into new arrangements which replace the terminated Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Agreement.***

***“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.***

***“Day” means twenty–four (24) consecutive hours commencing with the hour ending 0100 EPT through hour ending 2400 EPT on any calendar Day.***

***“Defaulting Party” has the meaning set forth in Article 5.1.***

***“Delivered Energy” means Contract Energy delivered by Seller to Buyer at the Delivery Point.***

***“Delivered RECs” means Contract RECs delivered by Seller to Buyer at the Delivery Point.***

***“Delivery Period” means the period of delivery of the Solar Product under this Agreement.***

***“Delivery Point” means a point on the Con Edison or LIPA’s electric [Transmission] [Distribution System] that is acceptable to Con Edison or LIPA where Contract Capacity is made available to NYPA and Contract Energy is delivered to NYPA.***

***“Distribution System” means, for the purpose of this agreement, those primary distribution system facilities used to distribute electric energy to consumers, including supply lines, distribution lines, service laterals, and accessory equipment which are not classified as transmission facilities under the NYISO Open Access Transmission Tariff.***

***“Downgrade Event” has the meaning set forth on the Cover Sheet.***

***“Early Termination Date” has the meaning set forth in Article 5.2.***

***“Effective Date” has the meaning set forth in Section 2.1. means the date the executed Agreement is approved in writing by the State Comptroller.***

***“Electric Metering Devices” means electric meters and associated equipment, including metering transformers and meters for measuring Energy produced by the Solar Generating Facility.***

***“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.***

***“EPT” means Eastern Prevailing Time.***

***“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.***

***“Escrow” means the placing of an amount of U.S. currency with an escrow agent (and pursuant to an escrow agreement) reasonably acceptable to the Parties that provides for draws by a Party in accordance with Article 7 of this Agreement, the costs of which shall be borne by the Party providing the Escrow.***

***“Event of Default” has the meaning set forth in Article 5.1.***

***“Facility Capacity” means the nameplate capacity (in kW) of the SGF(s) as set forth in Exhibit A.***

***“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or is the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Solar Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Solar Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailments related to the transmission and/or Distribution System. If the Claiming Party is Buyer, Force Majeure does not include any action taken by Buyer in its governmental capacity.***

***Forced Outage – means an unplanned outage or derating of the Solar Generating Facility(ies) that is: (i) an unplanned failure of the Solar Generating Facility(ies) or a component thereof other than other than due to a Force Majeure Event that requires the Solar Generating Facility(ies) to perform maintenance on all, or part of, the Solar Generating Facility(ies) that is not considered an Excused Outage or a Force Majeure Event; or (iii) any other failure of the Solar Generating Facility(ies) to make available, or Seller to Schedule, any of the Solar Products that is not excused pursuant to the terms of this Agreement.***

***“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner.***

***“Good Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Solar Generating Facility, Good Utility Practice(s) includes taking reasonable steps to ensure that:***

***(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Solar Generating Facility’s needs;***

***(B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Solar Generating Facility properly, efficiently, and in coordination with Company and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;***

***(C) preventive, routine, and non routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;***

***(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;***

***(E) equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the***

***interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAr) loading, frequency, polarity, synchronization, and/or control system limits;***

***(F) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions; and***

***(G) equipment, components, and processes are appropriately permitted with any Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.***

***“Governmental Authority” means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other governmental entity, including NYISO, and the New York Power Authority (except when acting as Buyer pursuant to this Agreement and any related agreement between the parties hereto).***

***“Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.***

***“Guaranty” means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of Seller which shall be in the form substantially similar to the form in Exhibit E.***

***“Interconnection Agreement” means the agreement set forth in Attachment x that governs the interconnection between the Con Edison [Transmission] [Distribution] System's Interconnection Facilities and the SGF.***

***“Installed Capacity Supplier” - means a party that satisfies the NYISO Rules for qualification to supply Installed Capacity into the NYISO Capacity Market.***

***“Interest Rate” means the effective interest rate as established by Section 2880 of the Public Authorities Law of the State of New York, and any successor thereto.***

***“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.***

***“RPS Program-Solar” is that criteria for meeting standards in New York State as set forth in Exhibit C.***

***“Liquidate” means to convert into cash.***

***“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of the Agreement, determined in a commercially reasonable manner.***

***“Month” or “Monthly” means a period commencing with the start of the hour ending 0100 EPT on the first Day of a calendar month and closing at the end of the hour ending 2400 EPT on the last Day of that calendar month.***

***“Monthly Capacity Payment” means the amount to be paid by Buyer to Seller for Buyer’s purchase of the Contract Capacity for a particular Month, as calculated pursuant to Exhibit A.***

***“Monthly Energy and RECs Payment” means the amount to be paid by Buyer to Seller for Buyer’s purchase of the Delivered Energy and Delivered RECs for a particular Month, as calculated pursuant to Exhibit A.***

***“Moody’s” means Moody’s Investor Services, Inc. or its successor.***

***“NERC” means the North American Electric Reliability Council or any successor government agency.***

***“New York Control Area” has the meaning set forth in NYISO Rules.***

***“Non-Defaulting Party” has the meaning set forth in Article 5.2.***

***“NYISO” means the New York Independent System Operator.***

***NYISO Contract Capability Period – means the NYISO Summer Capability Period or NYISO Winter Capability Period.***

***NYISO ICAP – means NYISO Installed Capacity.***

***NYISO Installed Capacity – means the aggregate nameplate capacity of the panels (individual or in aggregate) in each solar array comprising the SGF, net of any station service Load required for operation and delivery to the Distribution System or Transmission System (for an applicable NYISO Contract Capability Period) as calculated under the NYISO Rules.***

***NYISO Installed Capacity Manual - has the meaning set forth in the NYISO Rules.***

***NYISO Installed Capacity Market – means the market administered by the NYISO in which NYISO Installed Capacity is sold and purchased pursuant to NYISO Rules.***

***NYISO Markets – means markets administered by the NYISO.***

***NYISO Rules - means the NYISO Tariff and all NYISO manuals, rules, procedures, agreements or other documents governing the participation of market participants (including both Buyer and Seller) in the NYISO Markets.***

***“Off-Peak Hours” means all hours of a Day that are not Peak Hours.***

***“Peak Average Capacity” is defined in Article 3.23(B).***

***“Peak Hours” means those hours between hour ending 0800 EPT to and including hour ending 2300 EPT, Monday through Friday, except for holidays as defined by the NERC.***

***“Performance Assurance” means collateral in the form of either: Escrow (in U.S. currency), Letter(s) of Credit, Guaranty, Performance Bond or other security acceptable to the Requesting Party.***

**“Performance Bond” means a bond issued by a surety company to protect the recipient against loss in case the terms of a contract are not filled; the surety company assumes liability for non-performance.**

**“Project” means the Solar Generating Facility.**

**“Renewable Energy Certificate” or “REC” means the RPS-eligible Attributes offered and delivered as performance during the Term of the Agreement.**

**“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for the Solar Products if it is not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Solar Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Solar Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Solar Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Solar Product to another party at the Delivery Point.**

**“RPS-eligible Attributes” means all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a SGF. One RPS-eligible Attribute shall be created upon the generation by a SGF of one MWh of [Actual Eligible Production]. RPS-eligible Attributes include but are not limited to: (i) any avoided direct emissions of pollutants to the air, soil or water; (ii) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SOx), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (iii) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been**

**or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iv) all set-aside allowances and/or allocations from emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (v) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. RPS-eligible Attributes do not include (i) any energy, capacity, reliability or other power products, such as ancillary services; (ii) production tax credits associated with the construction or operation of the SGF or other financial incentives in the form of credits, reductions, or allowances associated with the SGF that are applicable to a state or federal income taxation obligation; (iii) fuel-related subsidies or "tipping fees" that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the SGF for compliance with local, state, or federal operating and/or air quality permits.**

**"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.**

**"Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Solar Products not received by Buyer, adding to such proceeds any (i) costs reasonably incurred by Seller in reselling such Solar Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Solar Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Solar Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Solar Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller purchases and receives the Solar Product from another party at the Delivery Point.**

***“Seller” means [NAME OF ENTITY]***

***“Seller Security” is defined in Article Eight.***

***“Settlement Amount” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of the Solar Product pursuant to Article 5.2.***

***“SGF” means the Solar Generation Facility.***

***“Site” is described in Supplement 2.***

***“Solar Agreement” has the meaning set forth on the Cover Sheet.***

***“Solar Products” means the Contract Capacity, the Contract Energy and the Contract RECs.***

***“Solar Generating Facility” means the [INSERT PROJECT NAME] resource.***

***“State Comptroller” means the Comptroller of the State of New York.***

***“Term” shall have the meaning set forth in Article 2.1.***

***“Termination Payment” has the meaning set forth in Article 5.2.***

***“Transfer” has the meaning set forth in Article 3.9.***

## TERMS AND CONDITIONS

**Term. This Agreement shall become effective on the date first set above (“Effective Date”), and shall remain in effect for a period of [SPECIFY PERIOD BETWEEN 5 AND 20 YEARS] from such date unless terminated earlier in accordance with the terms hereof (the “Term”); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to purchase and sale of the Solar Products. The Term shall be subject to the termination provisions of Articles 2.3 of this Agreement.**

**Opinion of Counsel. Each Party shall deliver to the other Party an opinion of counsel no later than five (5) Business Days after the Effective Date, in form and substance reasonably satisfactory to the receiving Party regarding the validity, binding effect and enforceability of this Agreement against the Party providing such opinion.**

**Early Termination by Buyer. Buyer may terminate this Agreement, without payment or liability of any kind to Seller, if Seller has not satisfied the conditions set forth in Articles 2.2 within ten (10) Business Days of the date that Seller receives notice from Buyer of the achievement of the Effective Date, provided that Buyer shall provide its notice of termination no later than twenty (20) Business Days after the Effective Date. Notwithstanding any provision to the contrary in this Agreement, if the Project fails to achieve Commercial Operation for any reason within one hundred eighty (180) Days of the COD Target Date, Buyer shall have the right to terminate this Agreement with no liability whatsoever upon Notice by Fax to Seller given within thirty (30) Days of the missed deadline. Such termination rights are in addition to and not in lieu of other remedies Buyer has under the Agreement.**

**Contesting Validity of Agreement. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of this Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of**

**authority of the Party or any lack of authority of any employee of the Party to enter into the Agreement.**

OBLIGATIONS AND DELIVERIES

**Seller's and Buyer's Obligations. Seller shall sell and deliver, and Buyer shall purchase and receive, the Solar Products at the Delivery Point. Buyer shall pay Seller the applicable Contract Price set forth in Exhibit A for Contract Capacity, Delivered Energy, and Delivered RECs. Seller shall be responsible for any costs or charges imposed on or associated with the Solar Products and/or the delivery of the Solar Products up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Solar Products or its receipt at and from the Delivery Point.**

**COD Target Date. Buyer and Seller shall use reasonable commercial efforts and work cooperatively so that the COD is achieved by the COD Target Date.**

**Conditions for COD. The COD shall occur upon the achievement of Seller's Conditions in Article 3.3.1; provided that Seller shall deliver to Buyer written notice seventy-two (72) hours prior to COD that the conditions in Article 3.3.1 have been met.**

3.3.1 Seller's Conditions

Delivery of written certificate from an officer of Seller to Buyer, in form and substance satisfactory to Buyer, that (a) Seller has obtained all Consents necessary to install and operate the SGF; (b) Seller has successfully completed all tests required for Seller to operate the SGF except for such testing that is required by law, regulation or order of a Governmental Authority to be conducted after the COD; (c) the SGF meets the RPS Program-Solar eligibility rules and requirements, (d) that the creation of, and title to, RECs are sufficiently verifiable for purpose of the New York State Environmental Disclosure Program; and (e) Seller has complied with all applicable NYISO Rules with regards to certifying the SGF's capacity as NYISO ICAP;

Delivery by Seller to Buyer of certificates of insurance coverage or proof of insurance policies, as required pursuant to Article Ten and Exhibit D of this Agreement;

Delivery to Buyer of design documents for SGF(s) as set forth in Article 3.22;

Completion of required commission and acceptance test services as set forth in Section 3.21;

Written notice by Seller to Buyer that the SGF(s) is capable of operation in accordance with Good Utility Practices, the prevailing rules associated with the NYISO, and all equipment manufacturers' instruction manuals and warranties;

the SCF(s) has achieved initial synchronization with Con Edison's [Distribution] [Transmission] System;

an independent professional engineer's certification has been obtained by Seller stating that the SGF(s) has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the SGF to operate as intended hereunder) in accordance with this PPA;

Seller has made all arrangements and executed all agreements required to deliver the Solar Products from the Solar Generating Facility to the Delivery Point in accordance with the provisions of this PPA;

Delivery by Seller to Buyer of a fully executed Interconnection Agreement with a term ending no earlier than the Term; and

Delivery by Seller to Buyer of Seller Security that meets the requirements of Article 8.

### **COD Liquidated Damages**

(a) COD. If the COD is not achieved within one hundred eighty (180) Days of the COD Target Date, then Seller shall pay to Buyer as liquidated damages in the amount of thirty thousand dollars (\$30,000) per MW [\$30,000]/MW for the amount of Solar Product not delivered to Buyer ("COD Liquidated Damages"). Buyer may draw from Seller Security the COD Liquidated Damages as set forth in this Article.

(b) If the COD is achieved after the COD Target Date but within one hundred eighty (180) Days of the COD Target Date there shall be no COD Liquidated Damages owing to Buyer.

(c) Damages. To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that the damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the liquidated damages set forth in this Agreement constitute a reasonable approximation of the harm or loss.

(d) Payment of Liquidated Damages. Liquidated Damages will be paid by Seller to Buyer pursuant to the provisions of Article Six.

**Liquidate Energy.** *Buyer shall be free to Liquidate Delivered Energy.*

**Failure to Deliver.** *Buyer shall have the sole and exclusive right to purchase all Delivered Energy . Should a SGF fail to provide at least ninety-five percent (95%) of the Contract Energy for each of six (6) consecutive Months, the Contract Energy will be modified for the remainder of the Term of the Agreement, at the Buyer's discretion, to equal the average actual Delivered Energy provided over the previous six (6)-Month period.*

**REC Requirements.** *Buyer's right, title and interest shall include exclusive rights to all RECs for the Term, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (a) that the Energy associated with RECs was generated by the SGFs and matches on a Monthly basis; and (b) that Buyer receives credit for the reductions in emissions and/or other pollution resulting from the generation of the Delivered Energy.*

**REC Restrictions.** *At the time of such sale, assignment and conveyance by Seller to Buyer, the RECs shall be free and clear of all liens, judgments, encumbrances and restrictions.*

**Assignment and Transfer of Rights to RECs.** *The assignment and transfer ("Transfer") of RECs to Buyer shall be accomplished through their inclusion on the Certification and Assignment of Rights Form, found in Exhibit B, which must accompany each invoice. Should the Buyer create, sanction, adopt or begin participation in a tracking system for accounting for generation attributes or certificates associated with generation in the New York Control Area, Transfer will also include the delivery of the attributes or certificates associated with each REC; at the earliest time such certificates or attributes become available for delivery, to Buyer.*

**Seller's Responsibility Related to RPS-Eligible Attributes.** *In the event that Seller must apply for or take some other action under any emission-trading or other regime other than the RPS Program-Solar in order to secure a claim, title, ownership, or rights of any type, nature or sort to any RPS-eligible Attributes associated with Contract Energy, or any certification, registration, verification or other memorialization of the creation of such RPS-eligible Attributes by the SGF to which Seller may be entitled (Title), Seller shall (i) take*

***all actions necessary to apply for and secure such Title, to the maximum extent to which Seller is entitled, (ii) provide Buyer with evidence of taking such action; and (iii) Transfer such Title to Buyer whenever so secured.***

***Buyer's Obligation Under RPS Program-Solar. Buyer's obligations under this Agreement are expressly conditioned on the eligibility of Seller's SGF, at the time of execution of this Agreement and throughout the duration of the Term of the Agreement, under the RPS Program-Solar eligibility rules and requirements, as provided in Appendix C. The SGF will not be subject to subsequent changes in RPS eligibility rules; however, in the event that the SGF fails to maintain eligibility consistent with the RPS Program-Solar requirements in effect on the date of this Agreement, such ineligibility will extend to the attributes emanating from the SGF.***

***Buyer's Rights Related to Verifiable RPS-Eligible Attributes. Buyer's obligations to purchase RECs and to make payment under this Agreement are conditioned on the ability of Seller to demonstrate to Buyer's satisfaction that the creation of and title to the RPS-eligible Attributes is sufficiently verifiable for purposes of the New York Environmental Disclosure Program.***

***Buyer's Rights Related to Commencement of Facility. Buyer's obligations to purchase RECs and to make payment under this Agreement are conditional on the commencement by the SGF(s) of Commercial Operation at a minimum of eighty percent (80%) of the Facility Capacity on or before the COD Target Date. However, Seller shall be obligated to deliver at least ninety-five percent (95%) of the Contract Energy and Contract RECs during the twenty-four (24) Month period from the COD and in the event that the SGF is unable to do so within such time frame, Buyer shall have the right to terminate this Agreement in accordance with Section 5.2.***

***Buyer's Rights Related to RECs. Buyer shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the RECs or the right, title and interest to the RECs Buyer shall acquire under this Agreement, at any time and from time to time to any entity and on such terms and conditions as Buyer may desire. Any financial or other consideration received by Buyer from any such action shall inure solely to Buyer's benefit, and shall not affect the Seller's obligations under the terms of this Agreement.***

**Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Agreement, such Party (the “Claiming Party”) shall provide written notice and details of the Force Majeure event to the other Party as soon as practicable. Unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations under the Agreement to the extent such Force Majeure affects its performance (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party that are affected by the inability of the Claiming Party to perform as a result of such Force Majeure. The Claiming Party shall have twelve (12) Months to remedy the Force Majeure; if the Claiming Party is unable to do so, the non-Claiming Party shall have the right to terminate this Agreement in accordance with Section 5.2.

**No Immunity Claim.** Buyer warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

**Electric Metering Devices.** All Electric Metering Devices used to measure the Contract Capacity and Contract Energy sold by Seller to Buyer under this Agreement and to monitor and coordinate operation of the Solar Generating Facility shall be owned, installed, and maintained by Buyer. Seller shall provide Buyer unlimited access to the Electric Metering Devices which shall be located on the Site unless otherwise agreed by the Parties. Buyer shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer’s safety standards. Upon request by Seller, Buyer shall perform additional inspections

**or tests of any Electric Metering Device and shall permit a qualified representative of Seller to inspect or witness the testing of any Electric Metering Device, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Buyer. If requested by Seller in writing, Buyer shall provide copies of any inspection or testing reports to Seller. Seller may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to those installed and maintained by Buyer, which installation and maintenance shall be performed in a manner acceptable to Buyer. Seller, at its own expense, shall inspect and test Seller's Back-Up Metering upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Buyer, Seller shall perform additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified representative of Buyer to inspect or witness the testing of Seller's Back-Up Metering, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless, upon such inspection or testing, Seller's Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Buyer in writing, Seller shall provide copies of any inspection or testing reports to Buyer. If any Electric Metering Devices, or Seller's Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.**

**Adjustment for Inaccurate Meters. If an Electric Metering Device, or Seller's Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Seller's Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Seller's Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:**

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that Seller's Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Seller's Back-Up Metering is installed on the low side of Seller's step-up transformer, the Seller's Back-Up metering data shall be adjusted for losses. In the event that Seller did not install Back-Up Metering, or Seller's Back-Up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of SGF Energy from the Facility and to the Delivery Point during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

**(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the**

**owing Party receives notice of the amount due, unless Buyer elects payment via an offset.**

**Monitoring. Buyer intends to monitor system performance of the SGFs in order to facilitate public education and outreach. As such, Buyer plans to install, own and maintain a data acquisition system at Buyer's sole expense that allows Buyer to monitor, analyze, and display historical and live, solar electric generation data for all installed sites. Seller shall reasonably cooperate with Buyer to allow for installation and maintenance of the monitoring system. Any monitoring system that Seller requires for operation and control of its SGF shall be installed at Seller's sole expense.**

**Interconnection of SGF to Con Edison's Electrical System. Seller shall be responsible for all costs associated with the electrical interconnection of each SGF to Con Edison's electrical system in accordance with Con Edison's Interconnection Standards. Buyer shall install, provide, own and maintain all interconnection equipment and the Parties shall cooperate to install such interconnection(s) in a timely manner so as to meet the COD Target Date.**

**Required Commissioning and Acceptance Test Services. Required commissioning and acceptance test services shall include:**

(A) start-up of each of the photovoltaic system(s) and its delivery of power to the grid in an amount that is in accordance with contract and the system manufacturers published performance curve for power production at the solar irradiance that is present at the time of the start-up of the system. To the extent practical such start-up shall be at or near the time of peak solar irradiance for the day.

(B) performance testing over a consecutive twenty-four (24) hour period (includes testing output during Peak Hours to establish the Contract Capacity as set forth in Article 3.22 below).

**(C) successful delivery of energy within thirty (30) Days of completion of a system.**

**Buyer Review of SGF Design. At least [ninety (90)] Days prior to the proposed start of construction, Seller shall provide Buyer with**

**design documents on each SGF that delineate, explain, and communicate the following information:**

- (A) equipment details and description, including the manufacturer of the photovoltaic module and the inverter;
- (B) layout of installation and equipment;
- (C) selection and procurement of key equipment;
- (D) specifications of equipment procurement and installation;
- (E) all engineering associated with structural and mounting details for each site;
- (F) performance of equipment components, subsystems, specific site projects;
- (G) integration of solar PV system with other power sources;
- (H) electrical grid interconnection requirements;
- (I) controls, monitors, and instrumentation;
- (J) web-based performance monitoring; and
- (K) time frame for key milestones.

**SGF Contract Capacity Adjustment. The Contract Capacity shall be established as set forth in this Article.**

**(A) As part of the commissioning and acceptance testing performed upon COD, a performance test of the SGFs will be completed to determine the maximum Capacity output of the SGFs during Peak Hours. Such maximum Capacity output shall be the Contract Capacity for the calendar year during which the COD occurs (“Contract Capacity for Year 1”).**

**(B) At the end of the first (1<sup>st</sup>) calendar year following the COD, Buyer shall review the historical performance of the SGF during Peak Hours in that year’s Summer Period to determine the maximum Capacity output measured during each Month for such period. The arithmetic average of such maximum Capacity outputs for each Month shall be the “Peak Average Capacity for Year 1”. The “Contract Capacity for Year 2” of the Term shall equal the arithmetic average of the Contract Capacity for Year 1 and the Peak Average Capacity for Year 1.**

(C) At the end of each subsequent calendar year of the Term, Buyer shall compute the Contract Capacity for the following year using the same process as set forth in Article 3.22(B) above.

**(D) Buyer shall notify Seller of the Contract Capacity determined pursuant to this Article 3.22 in writing by the end of each calendar year.**

**All Solar Products Sold to Buyer. All Solar Products produced by the SGFs shall be sold by Seller to Buyer. At Buyer's request, Seller shall make available all records pertaining to production and sale of Solar Products to Buyer, including any records in the possession of the NYISO.**

**Power Factor Adjustment. The SGF should deliver power at a power factor of one hundred percent (100%) with a bandwidth of plus or minus two percent (2%).**

#### **REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

**Seller Failure. If Seller fails to deliver all or part of the Solar Products pursuant to the Agreement, and such failure is not excused under the terms of the Agreement or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the Month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.**

**Buyer Failure. If Buyer fails to receive all or part of the Solar Products and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the Month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.**

#### **EVENTS OF DEFAULT; REMEDIES**

**Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:**

the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within thirty (30) Business Days after written notice;

any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Solar Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within thirty (30) Business Days after written notice;

such Party becomes Bankrupt; and

such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

5.1.1. Seller Event of Default

- (i) any failure of the SGF to commence Commercial Operation at a minimum of eighty percent (80%) of the Facility Capacity set forth in Exhibit A for the COD Target Date on or before the COD Target Date;
- (ii) failure of the SGF to deliver at least ninety-five percent (95%) of the Contract Energy in conformance with Section 3.13;
- (iii) failure by Seller to Transfer rights to Buyer of the Contract RECs, in conformity with Article Three;
- (iv) failure of the SGF to maintain eligibility consistent with the RPS Program-Solar requirements in conformity with Article Three; and

**(v) failure by Seller to remedy a Force Majeure event within twelve (12) Months from the commencement of such Force Majeure event.**

**(vi) Any sale of Solar Products during the Term to any entity other than Buyer.**

**Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other**

**Party (the “Non-Defaulting Party”) shall have the right (i) to designate a Day, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate the Agreement (between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the terminated Agreement as of the Early Termination Date. The Settlement Amount shall be the amount due to the Non-Defaulting Party (“Termination Payment”).\_**

**[This section intentionally left blank]**\_

**Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after such notice is effective.**

**Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.**

**[This section intentionally left blank]**\_

**Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under the Agreement provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an early Termination Date shall have been declared and notice thereof pursuant to Article 5.2 given, and (ii) to**

***the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.***

#### **PAYMENT**

***Billing Period. Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement (other than Termination Payments).***

***As soon as practicable after the end of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.***

***Invoices. Seller shall submit Monthly invoices throughout the Term for (i) Capacity made available and (ii) Energy and RECs delivered to Buyer in the prior Month. Such invoices shall include a statement of the amount due and payable by Buyer to Seller, which amount shall be calculated in accordance with Exhibit A. All such invoices must and shall be accompanied by a completed Certification and Assignment of Rights Form, in the form provided at Exhibit B hereto, and must otherwise demonstrate the Transfer of the RECs. All invoices must be accompanied by a completed Hourly Data Report.***

***Timeliness of Payment. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the thirtieth (30<sup>th</sup>) Day after receipt of the invoice or, if such Day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.***

***Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) Months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when***

**due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Article 6.3 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance occurred, the right to payment for such performance is waived.**

**[This section intentionally left blank]**

**Payment Obligation. Each Party shall pay the Other Party all amounts owed in full when due except for amounts in dispute in accordance with Article 6.3 and Article 6.4.**

#### **LIMITATIONS**

**Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES**

**RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

**SELLER SECURITY**

**Seller Security. As security for Seller to (i) complete SGF installations that it has started, (ii) meet its obligations to provide Solar Products for the Term, and (iii) meet its obligations in an Event of Default under Article Five, Seller shall deliver to Buyer within five (5) Business Days of receipt of notice from Buyer that the Effective Date has occurred in accordance with Article 2.1, and shall maintain throughout the Term: a Performance Bond, Guaranty(ies), Letter(s) of Credit, and/or money in Escrow in an amount equivalent to the product of (1) Contract Capacity (in MW) and (2) thirty thousand dollars (\$30,000)] on the terms and conditions set forth herein (“Seller Security”).**

**Seller Security Reduction and Replacement.**

- (i) On the fifth anniversary of the Term, Seller Security shall be decreased by five percent (5%).**
- (ii) Seller shall have the right to replace any Performance Bond, Letter of Credit, Guaranty or Escrow with a substitute form of Seller Security provided that Buyer has consented with Buyer to such replacement (such consent not to be unreasonably withheld) and that any such replacement meets the terms and conditions of Seller Security under this Agreement.**

**Draw on Seller Security. Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller Security. Upon termination,**

**Buyer shall have the right to draw upon Seller Security for any undisputed amounts owed to Buyer under this Agreement.**

**Replenishment. In the event Buyer draws upon Seller Security pursuant to Article 8.3, Seller shall replenish the amount of Seller Security required by Article 8.1 within ten (10) Days.**

#### GOVERNMENTAL CHARGES

**Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.**

**Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the SGF(s) and the Solar Product arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Solar Product at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Solar Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Six of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.**

#### INSURANCE

**Insurance Required. Seller, at its sole cost and expense, shall acquire and maintain in full force and effect the types and amounts of insurance coverage described in Exhibit D. Failure by Seller to obtain the insurance coverage required by this Article shall not relieve Seller of the insurance requirements set forth or in any way relieve or limit Seller’s obligations and liabilities under any other provision of this Agreement.**

**Insurance Notice to Buyer. Seller shall arrange to have its insurance carriers send Buyer a written notice of cancellation or termination of Seller's insurance coverage required under this Article.**

**BUYER'S FIRST OPTION TO PURCHASE FACILITY and BUYOUT OPTION**

11.1 Buyer's Purchase Option in the Event of Sale of SGF. In the event Seller decides to sale one or more of the SGFs, Seller shall first grant Buyer the right to purchase such SGF at a price and under terms and conditions equal to that to be offered to a third party. Seller shall provide Buyer written notice of the proposed price, terms, and conditions of such sale and Buyer shall have forty-five (45) Days from receipt of Seller's notice to provide Seller either its written acceptance or rejection of such purchase option. Buyer's failure to respond to Seller within said forty-five (45) Day period shall be deemed that Buyer has rejected such purchase option. In the event Buyer elects not to exercise its right to purchase the SGF, Seller may sale the SGF to a third party at the price and under the same terms and conditions as offered to Buyer. For the avoidance of doubt, Seller shall not sell one or more of the SGFs to a third party without having first offered such SGFs to Buyer under the same price, terms, and conditions as offered to such third party.

11.2 Buyer's Purchase Remedy for Seller Event of Default. If there is a Seller Event of Default pursuant to Article 5.1, Buyer may elect, as an additional remedy to those set forth in Article 5, to purchase one or more of the SGFs at the price set forth in Exhibit H. Buyer shall make such election by providing written notice to Seller of Buyer's exercise of such purchase option within sixty (60) Days of the Event of Default. If Buyer provides notice that it is not exercising its right to purchase the SGF, Seller shall have the right to sale the SGF to a third party; provided that the sale price is no less than that set forth in Exhibit H.

**MISCELLANEOUS**

**Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party that:**

it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

it has all regulatory authorizations and approvals by Governmental Authorities necessary for it to legally perform its obligations under this Agreement;

the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Solar Product;

with respect to the purchase or sale of the Solar Product, it is a producer, processor, commercial user or merchant handling the Solar Product, and it is entering into this Agreement for purposes related to its business as such.

Additionally, Seller warrants:

that the RECs, as to which right and title is to be transferred to Buyer under this Agreement, are eligible and compliant with the RPS Program-Solar eligibility rules and requirements;

that the RECs, as to which right and title is to be transferred to Buyer under this Agreement, are free and clear of any liens, encumbrances and/or defects of title; and

that the RECs, as to which right and title is to be Transferred to Buyer under this Agreement shall not have otherwise been, nor will be sold retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

Additionally, Buyer warrants:

all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations;

all persons making up the Buyer's Board of Trustees are the duly appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law;

entry into and performance of this Agreement by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law;

the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law;

entry into and performance of this Agreement by Buyer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Buyer otherwise entitled to such exclusion; and

obligations to make payments hereunder do not constitute any kind of indebtedness of Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

**Title and Risk of Loss. Title to and risk of loss related to the Solar Products shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Solar Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.**

**Indemnity. Each Party shall indemnify and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Solar Product is vested in such Party as provided in the Agreement. Each Party shall indemnify and hold harmless the other Party against any**

**Governmental Charges for which such Party is responsible under Article Nine. The Seller shall indemnify and hold harmless the Buyer against any claim arising out of or relating to the construction, operation and maintenance of the Solar Generating Facility.**

**Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.**

**Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

**Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent.**

**A Party may change its addresses by providing notice of same in accordance herewith.**

**General. This Agreement (including the exhibits, schedules and any written supplements hereto), constitutes the entire agreement between the Parties relating to the subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) Months. This Agreement shall be binding on each Party's successors and permitted assigns.**

**Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Solar Products delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any**

**statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) Months from the rendition thereof, and thereafter any objection shall be deemed waived.**

**REC Eligibility Audit. Buyer may require periodic audits of the SGF to verify that the SGF remains eligible under the eligibility rules and requirements of the RPS Program-Solar, as such rules existed on the date of this Agreement. Prior to any material modification of the SGF, including but not limited to any modification that is expected to result in a change in the Facility Capacity of the SGF, Seller shall provide Buyer with written Notice and will provide to Buyer a written description of the planned modification.**

**Forward Contract. The Parties acknowledge and agree that this Agreement constitutes “forward contracts” within the meaning of the United States Bankruptcy Code.**

**Confidentiality. If the Parties have elected on the Cover Sheet to make this Article 12.11 applicable to this Agreement, neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.**

**Amendment. No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.**

**EXHIBIT A**  
**PRICING TERMS**

[INSERT PROPOSED CONTRACT ENERGY, CONTRACT CAPACITY, AND CONTRACT RECS AND PRICING TERMS FOR SOLAR PRODUCTS FOR EACH YEAR OF THE TERM]

**EXHIBIT B**

**CERTIFICATION AND ASSIGNMENT OF RIGHTS FORM**

BUYER Agreement No. \_\_\_\_\_

Name of Seller: \_\_\_\_\_

Name of SGF: \_\_\_\_\_

Invoice Number \_\_\_\_\_

Seller \_\_\_\_\_ hereby sells, assigns, conveys and delivers to Buyer all right, title and interest in the RECs, such RECs having been created in the month of \_\_\_\_\_, in the year \_\_\_\_\_, for which payment is requested by the accompanying invoice. Such right, title and interest shall include perpetual and exclusive rights to the RECs for which payment is requested, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (i) that the Energy associated with these RECs was generated by the SGF; and (ii) that NYPA is responsible for the reductions in emissions and/or other pollution resulting from the generation of that portion of the SGF's energy that is associated with these RECs.

Seller further certifies and guarantees that all of the information provided on the attached invoice requesting payment from Buyer is true and accurate; that the RECs to which all right, title and interest is transferred to Buyer by this instrument are free and clear of all liens, judgments, encumbrances and restrictions, and have not have otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Signature of Seller's Authorized Officer

\_\_\_\_\_

Name of Seller's Authorized Officer

## EXHIBIT C

### ELIGIBILITY AND REQUIREMENTS OF THE RPS PROGRAM-SOLAR

#### Eligibility Requirements:

- Solar Generating Facility(ies) must:
  - not have been included in the baseline electric generation sources of any State RPS program; and
  - Solar Generating Facility(ies) must demonstrate that it has not made use of other renewable programs available to it, such as New York State Executive Order 111 "Green and Clean" program, voluntary green market programs, or any State (New York or other) program that would result in a "double counting" of the RECs.

Solar Products to be from Solar Generating Facility(ies) that meets or is expected to meet the generation type and fuel source eligibility requirements of New York Retail Renewable Portfolio Standard Main Tier Eligible Electric Generation specific to Solar photovoltaic installations.

## EXHIBIT D

### INSURANCE REQUIREMENTS

Commencing with the Effective Date and at all times throughout the Term of this Agreement, Seller shall, at its own cost, maintain and cause to be maintained the types and amounts of insurance required by this Article. Such insurance shall be placed with responsible and reputable insurance companies (i) which have an A.M. Best rating of at least "A" or (ii) which are reasonably acceptable to Buyer, including Seller's related captive insurance company. Seller shall give Buyer prompt notice of any material alteration to any of such insurance coverages, but in no event later than five (5) Days after it learns of such material alteration.

#### 1. Insurance Policies and Limits:

##### 1.1 Workers' Compensation/Employer's Liability:

Workers' Compensation insurance including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer's Liability Insurance of not less than \$5,000,000 each accident/\$5,000,000 disease per employee/\$5,000,000 disease policy limit.

##### 1.2 Automobile Liability:

Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit for Bodily Injury and Property Damage Liability in an amount not less than \$5,000,000 each accident.

##### 1.3 Third Party Liability:

Third Party Liability insurance including contractual liability coverage for the indemnity provisions of this Agreement with a Combined Single Limit for Bodily Injury, Personal Injury and Property Damage Liability in amounts no less than \$5,000,000 each occurrence and in the aggregate each policy year.

##### 1.4 Umbrella or Excess Liability:

The limits of insurance specified in subsections 1.1 through 1.3 may be satisfied by the specified limits in the separate policies or by Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies provides the total limit required for each type of insurance.

##### 1.5 Property Insurance:

Property Insurance providing coverage for All Risks of direct physical loss or damage to, and for the maximum

foreseeable loss to, all property and equipment of Seller used for or in connection with the Solar Products supplied under this Agreement. Such coverage shall provide the costs of continuing expenses and additional expenses necessary to continue operations, insofar as reasonably possible, following loss of or damage to the property and equipment of Seller.

2. General Provisions.

2.1 Evidence of Coverage:

Seller shall, prior to supplying Solar Products under this Agreement, and within ten (10) Days after each reasonable request by Buyer, provide certificates of insurance to Buyer's insurance consultant for all insurance policies.

2.2 Additional Insureds:

With the exception of Workers' Compensation/Employer's Liability and Property Insurance, Buyer and any other party reasonably requested by Buyer shall be included as an additional insured on the policies required by this Article.

2.3 Waiver of Subrogation:

Buyer and any other party reasonably requested by Buyer shall be granted waivers of subrogation by insurers providing coverage as required by this Article.

2.4 Severability of Insureds:

All policies required in this Article shall provide that (i) inclusion of more than one person or organization as insured hereunder shall not in any way affect the rights of any such person or organization as respects any claim, demand, suit or judgment made, brought or recovered, by or in favor of any other insured, or by or in favor of any employee of such other insured, and (ii) each person or organization is protected thereby in the same manner as though a separate policy had been issued to each, but nothing therein shall operate to increase the insurance company's liability as set forth elsewhere in the policy beyond the amount for which the insurance company would have been liable if only one person or interest had been named as insured.

2.5 Primary Insurance:

Except for Property Insurance, the insurance coverage required by this Article shall be primary insurance with respect to the interests of Buyer and any other party reasonably requested by Buyer; any other

insurance maintained by Buyer or such other parties shall be excess and shall not contribute with the insurance required by this Article.

2.6 Notice of Cancellation:

All policies required in this Article may not be cancelled or materially altered without giving at least thirty (30) days (or ten (10) days if such cancellation is due to a failure to pay premiums) prior written notice of cancellation to Buyer.

2.7 Deductibles:

Any and all deductible amounts under policies provided by Seller pursuant to this Article shall be assumed by, for the account of, and at the sole risk of Seller.

**EXHIBIT E**

**FORM OF SELLER GUARANTY**

This GUARANTY (this "Guaranty"), effective as of \_\_\_\_\_, 200\_ (the "Effective Date"), is made and entered into by \_\_\_\_\_, a \_\_\_\_\_ (the "Guarantor"), in favor of the NEW YORK POWER AUTHORITY, a corporate municipal instrumentality and political subdivision of the State of New York (the "Buyer").

**WITNESSETH:**

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ (the "Seller"), a subsidiary of the Guarantor, and the Buyer have contemporaneously herewith entered into that certain Solar Capacity and Energy Power Purchase & Sale Agreement dated as of April \_\_, 2008 (as the same may be modified, amended, supplemented or extended, the "Purchase Agreement"), pursuant to which the Seller has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Seller, certain capacity of and electricity generated by the Seller's electric generating facility located in \_\_\_\_\_, \_\_\_\_\_ (the "Project") (capitalized terms used herein and not defined herein shall have the meanings given such terms in the Purchase Agreement); and

WHEREAS, the Guarantor will directly or indirectly benefit from the transactions to be entered into between the Seller and the Buyer pursuant to the provisions of the Purchase Agreement;

NOW THEREFORE, in consideration of the Buyer entering into the Purchase Agreement and as an inducement therefor, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, the Guarantor hereby irrevocably and unconditionally guarantees to the Buyer the timely payment when due of all of the obligations of the Seller to the Buyer arising out of, under or pursuant to an Event of Default under the Purchase Agreement, whether now existing or hereafter incurred or existing from time to time (the "Obligations"). This Guaranty shall constitute a guarantee of payment and not of performance or collection. Notwithstanding any provision to contrary set forth herein, the liability of the Guarantor under this Guaranty shall be subject to the following limitations:

(a) the maximum recovery which may be collected pursuant to the provisions of this Guaranty shall not exceed U.S. \$\_\_\_\_\_ (\_\_\_\_\_ United States dollars) in the aggregate; and

(b) the Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made under Section 8.3 of the Purchase Agreement (even if such payments are deemed to be damages) as well as costs of

collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Buyer, but, except to the extent specifically provided in the Purchase Agreement, the Guarantor will not be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, any other damages.

2. DEMANDS AND NOTICE. If the Seller fails or refuses to pay any Obligations beyond any periods of applicable grace and/or notice provided in the Purchase Agreement and the Buyer has elected to exercise its rights under this Guaranty, the Buyer shall make a demand upon the Guarantor (hereinafter referred to as a "Demand"). A Demand shall be in writing and shall specify in what manner and what amount the Seller has failed to pay and an explanation of why such payment is due. The Guarantor shall pay the Obligations set out in the Demand within five (5) Business Days after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until the Seller or the Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which commercial banks or financial institutions are open for business in the States of Florida and New York.

3. REPRESENTATIONS AND WARRANTIES. The Guarantor represents and warrants that:

(a) it is a \_\_\_\_\_ duly organized and validly existing under the laws of State of Delaware and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) the execution, delivery and performance of this Guaranty by the Guarantor have been duly authorized by all necessary corporate action and approvals;

(c) no approval of any Governmental Authority having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty;

(d) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and

(e) neither the making nor performance by the Guarantor of this Guaranty violates or will violate (i) any provision of law or regulation applicable to the Guarantor or any of its properties or assets; (ii) any writ, order or decree of any Governmental Authority applicable to the

Guarantor or any of its properties or assets; or (iii) any governmental approval applicable to the Guarantor; or (iv) any provision of the organizational or constituent documents of the Guarantor, and such actions do not, and will not, result in a breach of, constitute a default under, require consent under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the Guarantor under, any instrument or agreement to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's properties or assets are bound or affected.

4. SETOFFS AND COUNTERCLAIMS. The Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Seller is or may be entitled arising from or out of the Purchase Agreement, except for defenses arising out of the Bankruptcy (as hereinafter defined) of the Seller or the lack of power or authority of the Seller to enter into and/or perform the Purchase Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by the Guarantor and the Buyer. Any such amendment, waiver or consent which is so granted by the Buyer shall apply only to the specific occasion which is the subject of such amendment, waiver or consent and shall not apply to the occurrence of the same or any similar event on any future occasion.

6. WAIVER.

(a) Except as required in Section 2 above, the Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) notice of any default or event of default under the Purchase Agreement or with respect to any of the Obligations or notice of any other adverse change in the Seller's financial condition or means or ability to pay any of the Obligations; (iii) presentment, demand, protest and notice of dishonor or nonpayment concerning the liabilities of the Guarantor or the Seller; and (iv) any right to require that any action or proceeding be brought against the Seller or any other Person, or to require that the Buyer seek enforcement of any performance against the Seller or any other Person, prior to any action against the Guarantor under the terms hereof.

(b) No delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder. Except as provided herein, no notice to or demand on the Guarantor in any case by the Buyer hereunder shall entitle the Guarantor to any further notice or demand in any similar or other circumstances or constitute a waiver of the rights of the Buyer to take any other or future action in any circumstances without notice or demand.

(c) The Guarantor shall not be released from any of its obligations under this Guaranty as a consequence of, and this Guaranty shall be effective and binding on the Guarantor despite (i) any lack of or limitation in the power or status of the Seller or the directors, officers or agents thereof, (ii) any lack of validity, legality or enforceability of any of the Obligations or the Purchase Agreement or any other document, instrument or agreement referred to therein, (iii) any indulgence which the Buyer may from time to time grant to the Seller, (iv) any exchange or release of, or any failure to perfect or otherwise protect an interest in, any collateral held by the Buyer or any furnishing to the Buyer of any additional collateral for any of the Obligations, (v) any failure, delay or lack of diligence by the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer under the Purchase Agreement or at law, or any action by the Buyer or such other Person granting indulgence or extension of any kind, (vi) the settlement, release or compromise of any Obligation, (vii) any change of status, composition, structure or name of the Seller by reason of bankruptcy, liquidation, insolvency, merger, dissolution, consolidation or reorganization ("Bankruptcy"), or otherwise, or (viii) any other circumstance which might otherwise constitute a defense against, or a legal or equitable discharge of, the Guarantor's liability under this Guaranty.

(d) The Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Purchase Agreement, in any such case without notice to or consent of the Guarantor.

(e) The Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment of any of the Obligations guaranteed hereby is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the Bankruptcy of the Seller or otherwise, all as though such payments had not been made.

7. NOTICE. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by nationwide courier service, as follows:

To Buyer: New York Power  
Authority

To Guarantor: [ \_\_\_\_\_  
 ]

Attn:

Tel No.: (\_\_\_\_)  
\_\_\_\_-\_\_\_\_ (for  
purpose of notices  
delivered by  
courier)

Notice given by personal delivery shall be effective upon actual receipt. Notice given by mail or courier service shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. SUBROGATION. The Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Obligations guaranteed hereunder have been paid in full or otherwise satisfied. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Obligations guaranteed hereunder shall not have been paid in full or otherwise satisfied, such amount shall be held in trust for the benefit of the Buyer and shall forthwith be paid to the Buyer to be credited and applied to the Obligations of the Seller.

9. COLLECTION COSTS. In addition to any other obligation or indebtedness of the Guarantor pursuant to this Guaranty, the Guarantor shall be liable to the Buyer for, and shall pay to the Buyer on demand, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses (including those for appellate proceedings)) incurred by the Buyer in enforcing performance of or collection of this Guaranty.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws (other than §5-1401 of the New York General Obligations Law).

(b) This Guaranty shall be binding upon the Guarantor and its permitted successors and assigns and inure to the benefit of and be enforceable by the Buyer and its permitted successors and assigns. Neither party may assign this Guaranty in part or in whole without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) This Guaranty embodies the entire agreement and understanding between the Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

(d) Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

(e) Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(f) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, \_\_\_\_\_, but it is effective as of the Effective Date.

[GUARANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**  
**FORM OF SELLER LETTER OF CREDIT**

FORM OF SELLER SECURITY (LETTER OF CREDIT)

[ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT No. \_\_\_\_\_

DATE: \_\_\_\_\_

BENEFICIARY:

APPLICANTS:

New York Power Authority  
[\_\_\_\_\_]

123 Main Street

White Plains, New York

Attn:

Vice President

INITIAL AMOUNT: USD \$ \_\_\_\_\_

DATE OF EXPIRY: On the Expiration Date (as hereinafter defined)

PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") for the account of \_\_\_\_\_, and \_\_\_\_\_] (collectively, the "Applicants"), on behalf of \_\_\_\_\_ ("Seller"), in the aggregate stated amount of not to exceed

\_\_\_\_\_ AND \_\_\_\_\_/100  
US DOLLARS (US\$ \_\_\_\_\_) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the

"Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date (as hereinafter defined) at our counters at [ \_\_\_\_\_ ].

This Letter of Credit shall be of no further force or effect upon the close of business on \_\_\_\_\_, \_\_\_\_\_ (or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day); provided, however, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless we provide you with written notice of our election not to renew this Letter of Credit at least forty-five (45) days prior to any such expiration date; provided, further, however, that in no event shall the Expiration Date be extended beyond \_\_\_\_\_, \_\_\_\_\_ (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) either:
  - (i) Beneficiary's Certificate issued in the form of Annex I attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or
  - (ii) Beneficiary's Certificate issued in the form of Annex II attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_."

Multiple draws are permitted under this Letter of Credit; provided that the Available Amount of this Letter of Credit shall be permanently reduced by the \_\_\_\_\_ amount of each such draw.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the "International Standby Practices ISP98" of the International Chamber of Commerce as in effect on the date of issuance thereof (the "ISP98"). As to matters not covered by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[ISSUING BANK NAME]

By: \_\_\_\_\_  
Authorized Signature

Address: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

ANNEX I TO [Issuing Bank Name]  
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO.

\_\_\_\_\_

[Issuing Bank Name] Date: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]

Ladies and Gentlemen:

The undersigned \_\_\_\_\_,  
the duly elected and acting \_\_\_\_\_ of  
NEW YORK POWER AUTHORITY (the "Beneficiary"), hereby  
certifies to [Issuing Bank Name] (the "Bank"),  
\_\_\_\_\_, and \_\_\_\_\_] (collectively, the  
"Applicants"), and \_\_\_\_\_ ("Seller"), with  
reference to Irrevocable Nontransferable Standby Letter of  
Credit No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_ (the  
"Letter of Credit"), issued by the Bank in favor of the  
Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Solar Energy Purchase & Sale Agreement dated as of \_\_\_\_\_, 2008, as amended from time to time (the "Agreement"), between the Beneficiary and Seller.
2. The Beneficiary has not heretofore pledged, assigned, transferred or disposed of any of its right, title or interest in or to the Agreement.
3. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to  
\$ \_\_\_\_\_, pursuant to the provisions of Section 8.3 of the Agreement because  
[indicate applicable reason]:

[ \_\_\_\_\_ ] The amount drawn hereunder constitute undisputed amounts that are owed to Beneficiary by Seller as a result of an Event of Default (as defined in the Agreement) and that remain unsatisfied for at least thirty (30) Days (as defined in the Agreement) of becoming due and payable.

4. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS \_\_\_\_\_ AND \_\_\_\_\_/100ths (U.S.\$ \_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 3, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting \_\_\_\_\_ as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary:

NEW YORK POWER  
 AUTHORITY

By:

\_\_\_\_\_  
 Name:  
 Title:

ANNEX II TO [Issuing Bank Name]  
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO.

[Issuing Bank Name]

Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, the duly elected and acting \_\_\_\_\_ of NEW YORK POWER AUTHORITY (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), [\_\_\_\_\_ and \_\_\_\_\_] (collectively, the "Applicants"), and \_\_\_\_\_, a \_\_\_\_\_ ("Seller"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Solar Energy Purchase & Sale Agreement dated as of \_\_\_\_\_, 2008, as amended from time to time (the "Agreement"), between the Beneficiary and Seller.
2. The Beneficiary has not heretofore pledged, assigned, transferred or disposed of any of its right, title or interest in or to the Agreement.
3. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof.
4. The Beneficiary has provided at least thirty (30) days' prior written notice to the Applicants of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof.
5. The Applicants have failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) day period referred to in paragraph 4 above.
6. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS \_\_\_\_\_ & \_\_\_\_\_/100ths (U.S. \$ \_\_\_\_\_).
7. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 6 above,

which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Agreement, and (b) the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.

8. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting \_\_\_\_\_ as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary:

NEW YORK POWER AUTHORITY

By:

\_\_\_\_\_  
Name:  
Title:

**EXHIBIT G**  
**SGF CONSTRUCTION MILESTONES**

[SELLER TO INSERT SGF CONSTRUCTION MILESTONES AND TARGET DATES TO ACHIEVE TARGET COD]

**EXHIBIT H**  
**BUYOUT OPTION**

In the event that Buyer exercises its right pursuant to Article 11.2 to purchase one or more of the SGFs from Seller, Buyer shall have the right to purchase the facility in accordance with the following price schedule:

<u>DATE</u>	PURCHASE PRICE
[COD DATE, YEAR]	
[DATE, YEAR +1]	
[DATE, YEAR + ....]	
[TERM END DATE, YEAR]	

**EXHIBIT I**  
**PROJECTED ENERGY DELIVERIES**

[ATTACH PROJECTED ENERGY DELIVERIES FROM PROPOSER'S DATA SHEET]

**EXHIBIT J**  
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROCEDURES**

I. DECLARATION OF POLICY AND STATEMENTS OF GOALS. It is the policy of the Authority to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority's contracting activity for the procurement of goods and services. To effectuate this policy, the Contractor shall comply with these provisions and the provisions of Article 15-A of the New York Executive Law. The Contractor will use its best efforts to achieve the below-stated M/WBE Goals set for the Contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist Seller's compliance with the Authority's M/WBE program.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal  
2 %

Women-Owned Business Enterprise (WBE) Subcontracting Goal  
1.5%

II. DEFINITIONS.

- (1) CERTIFICATION. The process conducted by the New York State Department of Economic Development, Minority and Women's Business Division to verify that a business enterprise qualifies for New York State Minority or Women-Owned Business Enterprise status. To initiate the certification process, contact one of the offices listed below.

ALBANY OFFICE: (518) 292-5250  
30 South Pearl Street  
Albany, New York 12245

NEW YORK CITY OFFICE: (212) 803-2200  
633 Third Avenue  
New York, New York 10017

- (2) CERTIFIED BUSINESS. A business enterprise which has been approved by the Director for status as a MBE or WBE subsequent to verification that the business enterprise is owned, operated, and controlled by Minority Group Members, or women.

- (3) CONTRACT.

- (a) A written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby the Authority is committed to expend or does expend funds in return for labor, services, supplies, equipment materials or any combination of the

foregoing, to be performed for, or rendered or furnished to, the Authority; or

- (b) A written agreement in excess of one hundred thousand dollars (\$100,000), whereby the Authority is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.
- (4) CONTRACTOR. An individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to an Authority contract, or a bidder in conjunction with the award of an Authority contract or a proposed party to an Authority contract.
- (5) CONTRACT SCOPE OF WORK. For purposes of this section, this means:
  - (a) Specific tasks required by the Contract;
  - (b) Services or products which must be provided to perform specific tasks required by the Contract; and
  - (c) Components of any overhead costs billed to the Authority pursuant to the Contract.
- (6) DAY. A calendar state business day unless otherwise specified.
- (7) DIRECTOR. New York State Department of Economic Development, Minority and Women's Business Division.
- (8) DIRECTORY. The Directory of Certified Businesses, prepared by the Director.
- (9) GOAL. A percentage of participation, which is not a set aside or quota, that represents a target toward which the prime Contractor must aim in expending good faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Authority contracts.
- (10) NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, MINORITY AND WOMEN'S BUSINESS DIVISION. Office in the Executive Department created by Article 15-A of the Executive Law (hereinafter referred to as the "Office").
- (11) MINORITY GROUP MEMBER. A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
  - (a) Black persons having origins in any of the Black African racial groups;

- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic Origin, regardless of race;
  - (c) Native American or Alaskan native persons having origins in any of the original peoples of North America;
  - (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
  - (e) Other groups which the Office may determine to be eligible for M/WBE status.
- (12) MINORITY-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:
- (a) At least fifty-one percent owned by one or more Minority Group Members;
  - (b) An enterprise in which such minority ownership is real, substantial and continuing;
  - (c) An enterprise in which such minority ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and
  - (d) An enterprise authorized to do business in New York State and is independently owned and operated.
- (13) SUBCONTRACT. An agreement in which a portion of a Contractor's obligation under an Authority contract is under-taken or assumed.
- (14) WOMEN-OWNED BUSINESS ENTERPRISE. A business enterprise, including a sole proprietorship, partnership or corporation that is:
- (a) At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
  - (b) An enterprise in which the ownership interest of such women is real, substantial and continuing;
  - (c) An enterprise in which such women ownership has, and exercises the Authority to control independently, the day-to-day business decisions of the enterprise; and
  - (d) An enterprise authorized to do business in New York State and is independently owned and operated.

### III. BIDDING PROCESS PROCEDURES

- (1) Each bidder shall search for, assess the capabilities

of and generally deal with potential M/WBE subcontractors in a fair and responsive manner, allowing them the opportunity to participate in the Contract Scope of Work.

- (2) Each bidder will designate, and make known to the Authority, an M/WBE Officer who will have the responsibility for and authority to effectively administer the M/WBE Program.
- (3) As a part of its proposal, each bidder shall submit its Preliminary Subcontracting Plan, which shall identify the Certified Businesses it will utilize to meet its M/WBE Contract Goals. Approval of any such firm is solely within the discretion of the Authority.

The bidder will also designate an M/WBE Officer who will have the responsibility for, and authority to, effectively administer these procedures. If any bidder believes it may be unable to meet the Goals, the reasons shall be submitted in writing.

- (4) To help prospective bidders with M/WBE participation, they may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive law Article 15-A, (the Directory) at the same location where the Authority's bid document or request for proposals may be obtained or inspected and also at the Authority's office at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women's Business Division.
- (5) Firms certified as both MBE and WBE may count toward either the MBE or WBE Goal on a single contract, but not both, regardless of whether either Goal is thus exceeded. The Bidder must choose the Goal to which the participation value is to be applied in the Preliminary Subcontracting Plan.

#### IV. PROCEDURES AFTER CONTRACT AWARD

- (1) Within ten (10) days after contract award the Contractor may submit a complete Utilization Plan, which shall include identification of the M/WBEs which the Contractor intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the Contractor intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Authority will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comments on deficiencies in the plan.
- (2) The Authority shall consider a partial or total waiver of Goal requirements only upon the submission of a written

request for a waiver following Contractor's unsuccessful good faith efforts at compliance. (See Section VI, below). Such waiver request may be made simultaneously with the submission of the Utilization Plan.

- (3) The Contractor shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBES.
- (4) The Contractor shall keep records, canceled checks and documents for at least one (1) year following completion of the Contract. These records, and canceled checks, documents or copies thereof will be made available at reasonable times upon written request by the Authority or any other authorized governmental entity.
- (5) The Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award. A monthly compliance form has been provided in this Exhibit.
- (6) The Authority will conduct compliance reviews for determination of the Contractor's performance relative to meeting the specified M/WBE Goal which may include review and inspection of documents pertaining to the Contractor's efforts towards meeting the Goals and on-site interviews with personnel of Contractor and its Subcontractors. The Contractor will fully cooperate to assist the Authority in this endeavor.
- (7) The Contractor shall not use the requirements of this section to discriminate against any qualified company or group of companies.

V. CONDITIONS FOR SATISFYING M/WBE GOALS. M/WBE participation will be counted toward the total Contract M/WBE Goals subject to the following conditions:

- (1) If the Contractor is unable to meet the Goals with Certified Businesses by making all of the good faith efforts defined herein (under section VI), the Contractor shall actively solicit uncertified M/WBES to satisfy the Goals. Uncertified firms will be required to submit an application for certification (to the New York State Department of Economic Development, Minority and Women's Business Division) and will be counted as contributing towards the contract Goals only after they have been certified.
- (2) The Contractor must keep records of efforts to utilize certified M/WBE's including:
  - (a) The firm's name, address and telephone number.

- (b) A description of the information provided to the M/WBE.
- (c) A written explanation of why an agreement with the M/WBE was not obtained.
- (3) Price alone will not be an acceptable basis for rejecting M/WBE bids if any of the bids are reasonable.
- (4) Geographical limitation in the M/WBE search is not an acceptable reason for not meeting the M/WBE goal when traditionally non-local firms have been generally utilized.
- (5) The Authority reserves the right to reject any firm as counting toward meeting the Contractor's M/WBE goal if, in the opinion of the Authority, the facts as to that firm's business and technical organization and practices justify the rejection.

VI. CONTRACTOR'S GOOD-FAITH EFFORTS. To satisfy the M/WBE participation requirements, the Contractor agrees to make the following good-faith efforts in a timely manner:

- (1) Submission of a completed, acceptable Utilization Plan as described herein.
- (2) Advertising in appropriate general circulation, trade and minority and women-oriented publications.
- (3) Written solicitations made in a timely manner of certified minority and women-owned business enterprises listed in the Directory.
- (4) Attendance at pre-bid, pre-award, or other meetings, if any, scheduled by the Authority with certified M/WBEs capable of performing the contract scope of work.
- (5) Written notification to M/WBE trade associations located within the region where the contract scope of work will be performed.
- (6) Structuring the Contract Scope of Work for purposes of subcontracting with certified M/WBEs.
- (7) Where certified M/WBEs have expressed an interest to the Contractor in performing work that the Contractor normally performs with its own forces and the contract scope of work has not been fully performed, the Contractor shall consider subcontracting such work or portions of it to meet the M/WBE Goals.

**EXHIBIT K  
INTERCONNECTION AGREEMENT**

[INSERT EXECUTED INTERCONNECTION AGREEMENT]

# **Appendix C - Current MTA Occupancy Agreement**

## **METROPOLITAN TRANSPORTATION AUTHORITY**

### **ALL-AGENCY MASTER LICENSE AGREEMENT**

**THIS AGREEMENT** made the            day of            , 2008, between Metropolitan Transportation Authority, for and on behalf of itself and the following affiliates: New York City Transit Authority, Long Island Rail Road Company, Metro-North Commuter Railroad Company, Triborough Bridge and Tunnel Authority, and Metropolitan Suburban Bus Authority, c/o MTA Real Estate Department, 347 Madison Avenue, New York, New York 10017 (collectively, hereinafter called "Licensor"), and            (hereinafter called "Licensee"), a [corporation/partnership/joint venture] organized and existing under the laws of the State of            , and having its executive offices at            .

#### **WITNESSETH:**

**WHEREAS**, Licensee is a            ;

**WHEREAS**, Licensee desires to install solar panels on or along Licensor's property;

**WHEREAS**, Licensee understands that Licensor may lease or license space to other entities that may be in direct competition with Licensee in the marketing and provision of electrical capacity and other service; and

**WHEREAS**, Licensor is willing to license to Licensee on a non-exclusive basis the use and occupancy of a portion of Licensor's property to allow Licensee to construct and operate its permitted solar facilities, in accordance with the terms and conditions of this Master License Agreement and any Supplemental License Agreements entered into from time to time;

**NOW, THEREFORE**, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### **Article I. Definitions**

"Ancillary Equipment" shall mean, for each Licensed Area, the related radio equipment, cabinets, , mounting equipment, cables and other transmission lines, utility lines, and other equipment installed and/or located within such Licensed Area, other than the SSS

**"Chief Engineer"** shall mean the Chief Engineer of the MTA Operating Agency on or in which the particular Licensed Area at issue is located, or his/her authorized designee.

**"Commencement Date"** shall mean the commencement date of a Supplemental License as set forth in the related Supplemental License Agreement.

**"Force Account Charges"** shall mean the applicable MTA Operating Agency's charges for force account services as more fully set forth in Article X of this Master License Agreement.

**"Hazardous Substance"** shall mean (i) petroleum or any fraction of petroleum, (ii) asbestos or asbestos containing materials, (iii) polychlorinated biphenyls, (iv) radon, or (v) any other hazardous or toxic substance, pollutant, material or waste which is or becomes identified, listed or regulated as such by or pursuant to any federal, state or local environmental law.

**"Indemnitees"**: the entities defined as Indemnitees in Article XX of this Master License Agreement.

**"Licensed Area"** shall mean, for each Supplemental License, the premises described in the related Supplemental License Agreement.

**"Master License Agreement"** shall mean this Master License Agreement.

**"MTA"** shall mean the Metropolitan Transportation Authority, a public benefit corporation created and validly existing under the laws of the State of New York.

**"MTA Operating Agency"** shall mean, individually, New York City Transit Authority, Long Island Rail Road Company, Metro-North Commuter Railroad Company, Triborough Bridge and Tunnel Authority, and Metropolitan Suburban Bus Authority, all of which are New York public benefit corporations.

**"Supplemental License"** shall mean the license for each Licensed Area granted by this Master License Agreement, together with the specific Supplemental License Agreement related to such Licensed Area.

**"Supplemental License Agreement"** shall mean a Supplemental License Agreement in the form of Annex A hereto with such modifications as are mutually acceptable to Licensor and Licensee.

**"Support Structure"** or **"SS"** shall mean the support structure, if any, erected by or on behalf of the Licensee within a Licensed Area upon which solar panels and related equipment are intended to be mounted and any other structures, including any enclosure buildings, if any, erected by or on behalf of the Licensee within a Licensed Area.

**"Solar Facilities"** or **"SF"** shall mean for each Licensed Area, the related Support Structure and Ancillary Equipment, collectively, located within such Licensed Area.

"Work" shall have the meaning ascribed to such term in Section 7.2 of this Master License Agreement.

## **Article II. Grant of the License**

Section 2.1: Basis for Grant. Licensor represents and warrants that it has the authority under the powers vested in it by the New York State Public Authorities Law to enter into this Master License Agreement and any Supplemental License Agreements related hereto and Licensor has determined that it is in its interest, and in the public interest, to grant Licensee the license and privilege hereinafter described, upon and subject to the following covenants, terms and conditions from the date first written above.

Section 2.2: Supplemental License for Each Specific Site Comprised of Master License Agreement and Supplemental License Agreement. This Master License Agreement contains the basic terms and conditions upon which each site specific license, in the form of a Supplemental License Agreement, shall be granted. The terms of this Master License Agreement, together with the terms of the Supplemental License Agreement, shall comprise the Supplemental License for a specific Licensed Area. Neither party hereto is under any obligation to enter into a Supplemental License Agreement. Each Supplemental License Agreement shall reflect the mutual agreement of the parties on the specific terms and conditions related thereto, including, without limitation, license fees. In the event of a discrepancy or inconsistency between the terms and conditions of a particular Supplemental License Agreement and this Master License Agreement, the terms and conditions of the particular Supplemental License Agreement shall govern and control.

Section 2.3: The Grant. (a) Licensor grants to Licensee the license to install, maintain, operate and use the Licensed Area described in the related Supplemental License Agreement solely and exclusively for the installation, maintenance and operation of those solar facilities described in such Supplemental License Agreement, including to the extent applicable and set forth in such Supplemental License Agreement, the related Ancillary Equipment and Solar Support Structure.

Licensee shall not have the right to enter into sublicenses with other carriers relating to a Licensed Area. It is a condition of each Supplemental License that Licensee will not allow, permit, or suffer the Licensed Area, or any part thereof, to be used for any other purpose. Licensee agrees and acknowledges that the Licensed Area may be used solely to install, maintain and operate the SF described in the specific Supplemental License Agreement, and for no other purpose without the express written consent of Licensor, except as provided for in the applicable Supplemental License.

(b) Licensee agrees to use the Licensed Area solely and exclusively for the installation, maintenance and operation of the related SF in accordance with the terms and conditions contained herein and in the related Supplemental License Agreement solely for public safety for municipal, governmental and not for profit entities. Any use of the Licensed Area for commercial or profit purposes is expressly prohibited.

Except as provided for in Article VII herein, Licensee shall not make any material change in, alteration to, or replacement of, any SSS without the Licensor's prior written consent. With respect to changes, alterations or replacements which are required by changes in technology or the requirements of law, Licensor's consent shall not be unreasonably withheld. Subject to the provisions relating to access to the Licensed Area, Licensee shall be permitted to perform routine maintenance and repair on the SSS and the Ancillary Equipment. It is a condition of each Supplemental License that Licensee will not allow, permit, or suffer any Licensed Area, or any part thereof, to be used for any other purpose than those purposes expressly permitted under the applicable Supplemental License.

(c) It is understood that Licensor grants Licensee a non-exclusive license (except as otherwise expressly provided herein) and reserves the right to permit persons, firms and corporations other than Licensee to carry on the same or other business within its properties, it being further understood that Licensor shall not permit any other permittees, licensees or other third parties to use and occupy any portion of the Licensed Area if such use or occupancy commences after the Commencement Date of the applicable Supplemental License Agreement and materially and unreasonably interferes with the use and occupancy of the Licensed Area by the Licensee. Licensor shall not be liable to Licensee in any manner whatsoever should the use or occupancy of Licensor's property outside of the Licensed Area, or Licensor's use of the Licensed Area for its operations, including any construction, installation, removal or maintenance thereof, interfere with, disrupt, or otherwise affect Licensee's use and occupancy granted hereby; provided, however, that (i) in the event that a use commenced after the installation of Licensee's SF interferes with, disrupts or otherwise adversely affects Licensee's use or occupancy thereof, Licensor shall make a reasonable good faith effort to minimize such interference, it being understood that Licensor shall have no obligation to terminate the cause of such interference if such cause is associated with its operation of its transportation facilities, and (ii) nothing in any Supplemental License shall act to prevent Licensee from recovering damages from such third parties for any loss or expense, acts or omissions in the use of any of Licensee's SFs. If any use of the Licensed Area by Licensor that

commences after the Commencement Date of the applicable Supplemental License Agreement causes interference that renders Licensee's use of the Licensed Area technically impractical, Licensee shall have the right to request a relocation, at no cost to Licensor, under Section 6.2 of this Master License Agreement.

(d) This Master License Agreement, and each Supplemental License granted hereunder and under the related Supplemental License Agreement are and will be (i) subject and subordinate to all existing and future bond resolutions and related financing instruments, and all existing leases, licenses, franchises, liens, encumbrances, occupancies, crossings, easements and other property interests relating to or affecting the Licensed Area, and all rights thereunder, (ii) subject to present and future law, ordinances and regulations relating to the use, occupancy and condition of the SF, the Licensed Area and the applicable Supplemental License, and (iii) subject to the current and future condition and state of repair of the -SF and the Licensed Area.

(e) Security Shutdown. Notwithstanding any other provision of this License Agreement, and in addition to the rights of Licensor otherwise provided for in this License Agreement, Licensor, for security purposes in its sole and absolute discretion, may shut down the SF and/or any Sublicensee Equipment at any time and without prior notice for such period of time as determined by Licensor.

The Licensee shall provide maintenance management on a twenty-four (24) hour/ seven (7) day a week basis availability to Licensor as necessary, to enable Licensor the ability for an immediate shut-down of the SF if required.

(f) Licensor makes, and Licensee acknowledges that Licensor has made, no representations or warranties whatsoever to Licensee with respect to the SF and the Licensed Area or the suitability of the Licensed Area for any related activities of Licensee.

(g) Licensee hereby acknowledges that the granting by Licensor of a Supplemental License herein and in the related Supplemental License Agreement does not create any landlord-tenant relationship between the parties, nor does it give Licensee any real property rights.

Section 2.4: Licensor's Right to Occupy a Portion of the SSS. Licensor shall have the absolute right to occupy a portion of any SSS built by Licensee

for Licensor's own purposes if Licensor's equipment (i) can be safely attached within structural design standards, (ii) does not interfere with the operation of the equipment of Licensee and any sublicensees and (iii) complies with all applicable FCC regulations.

If Licensor chooses to occupy a portion of a SSS installed by or on behalf of Licensee, it may engage a contractor, approved by Licensee, which approval shall not unreasonably be withheld, to install its equipment on Licensee's facilities. Alternatively, Licensor may request that Licensee install Licensor's equipment. All expenses that Licensee actually incurs for ancillary equipment purchased or installed for the benefit of Licensor, or for related work performed by Licensee for the benefit of Licensor, shall be deducted from the fees payable or to be payable by Licensee for the use of a site provided that such costs are commercially competitive and documented in reasonable detail.

When Licensor occupies a portion of a SSS constructed by Licensee, the parties agree to negotiate in good faith issues concerning such occupation by Licensor. It is acknowledged by both parties that Licensor shall not be required to pay to Licensee any rental, license or other fee in exchange for the right to occupy a portion of such SSS or any equipment or facilities appurtenant thereto nor shall there be a diminution of license fees payable by Licensee or any Sublicensee to Licensor under the applicable Supplemental License Agreement.

Section 2.5: No Signs or Advertisements. Neither Licensee nor any third party under an agreement with Licensee is permitted to post signs or other advertisements in any Licensed Area or on any of the SSSs or other facilities which are subject to this Master License Agreement, except that Licensee, or any third party under an agreement with Licensee, may post warning, safety and emergency signs on its SSSs or other fences and facilities or as otherwise required by law. Licensor reserves the right to post signs and advertisements (including both its own signs and advertisements and signs and advertisements of third parties under agreements with Licensor) on any SF or other facility which is subject to any Supplemental License, at any time, provided that such posting does not unreasonably interfere with the use, maintenance and enjoyment of the Licensed Area by the Licensee or any sublicensees or create an unsafe condition. In no event shall Licensee have any right to any of the revenues associated with such signs and advertisements.

### **Article III. Term**

Section 3.1: Term of Master License Agreement. This Master License Agreement shall have a term equal to the longer of (i) years from the date first written above or (ii) the term of any operative, unexpired and unterminated Supplemental License Agreement, including renewals, provided, however, that if no Supplemental License Agreements are entered into within three (3) years from the date first written above, this Master License Agreement shall terminate.

Section 3.2: Term of Supplemental Licenses. The term of each Supplemental License, including the renewal option and notice provisions, shall be set forth in the related Supplemental License Agreement.

Section 3.3. Conditions for Grant of Base and Renewal Term:  
As a condition to the grant of the Base and Renewal Terms, the Licensee has never been and is not currently in default.

Section 3.4: End of Term; Holdover. (a) Licensee, with the Licensor's written consent, may holdover and remain in possession of the SF after the Expiration Date on a month-to-month basis on all of the terms and conditions contained herein except that the License Fee shall be adjusted as described in the following sentence. The then current Minimum Annual License Fees for the SF shall be on the date following the Expiration Date and on each anniversary thereof by multiplying the then current License Fees, if any, payable during the previous year by). Either party may terminate the holdover occupancy described in this section by delivering at least thirty (30) days prior written notice to the other party of this License Agreement.

(b) The parties hereto recognize and agree that the damage to Licensor resulting from any failure by Licensee to surrender timely possession of the Licensed Area if Licensor does not consent to Licensee's holding over will be extremely substantial, will exceed the amount of License Fees payable hereunder and will not be possible to measure accurately. Licensee therefore agrees that, in the absence of Licensor's consent to Licensee's holding over, if possession of the Licensed Area is not surrendered promptly to Licensor within ten (10) days after the Expiration Date or any earlier date of termination of this License Agreement, Licensee shall pay to Licensor in addition to other fees, damages as "Liquidated Damages", and not as a penalty, for each month or portion thereof during which Licensee holds over without Licensor's consent a sum equal to the License Fees for the SF payable under this License Agreement for such period during the year prior to the Expiration Date or any earlier date of termination of this License Agreement.

**Article IV. Cancellation, Termination and Remedies.**

Section 4.1: Events of Default. Each of the following events shall constitute an "Event of Default" under each Supplemental License:

(a) Licensee shall fail to provide supplemental power of any amount due under any Supplemental License within seven (7) days after the same shall become due or demanded, as the case may be, provided however that a payment default shall not constitute an Event of Default if Licensee shall have made the required payment within 10 days after notice from the Licensor of the payment default, it being understood that this cure right shall only be available for five payment defaults during the term of this Master License Agreement and that after the fifth such payment default, there shall be no further cure rights.

(b) The conviction of Licensee or any of its officers or employees upon the charge of the commission of a crime in connection with this Master License Agreement or any Supplemental License, including crimes committed upon the Licensed Area or Licensor's property.

(c) Any attempt on the part of Licensee, its agents, servants, or employees, to defraud Licensor of any money due it under any Supplemental License.

(d) Licensee or any of its officers, employees, agents, contractors, servants, representatives or invitees shall cause, permit or suffer to exist a material imperilment of the safety of Licensor's employees, passengers or customers.

(e) Licensee or any of its officers, employees, agents, contractors, servants, representatives or invitees shall commence construction prior to approval by Licensor of plans, specifications, and timetables pursuant to Section 7.2 hereof unless such construction is undertaken in an emergency and is to rectify an unsafe condition that is an immediate peril, in which event Licensee's action shall not be considered a default if Licensee shall have given notice as soon as reasonably practicable to Licensor of the condition and the actions intended to be taken to rectify such condition.

(f) There shall be a material deviation or variation from approved plans, specifications or timetable in any Licensed Area without the written consent of Licensor; provided, however, that if any such default does not create a material imperilment of the safety of Licensor's employees, passengers or customers and is reasonably susceptible to cure and Licensee is diligently and continually pursuing such cure, Licensee shall have a reasonable period of time to effect such cure; provided, further, that such period shall not exceed thirty (30) days from Licensee's receipt of such notice of default.

(g) Any material representation or warranty made by Licensee in this Master License Agreement or in any Supplemental License Agreement shall prove to have been incorrect when made or given.

(h) Licensee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against Licensee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of one hundred twenty (120) consecutive days.

(i) There shall be unauthorized use of the Licensed Area by Licensee or any sublicensee and such unauthorized use shall continue for a period of ten (10) days after there shall have been given to Licensee a notice specifying such unauthorized use and requiring it to be remedied.

(j) The assignment, transfer or sublicense of any Supplemental License by Licensee; provided, however, that if any such default is reasonably susceptible to cure and Licensee is diligently and continually pursuing such cure, Licensee shall have a reasonable period of time to effect such cure; provided, further, that such period shall not exceed thirty (30) days from Licensee's receipt of such notice of default.

(k) Licensee shall have abandoned the SF located on or within a Licensed Area, it being understood that abandonment shall not be deemed to have occurred if Licensee is complying with all of the terms of the applicable Supplemental License, including the obligations to maintain the Licensed Area and pay the applicable license fee even if it is not operating the SF at such Licensed Area; provided, however, that if any such default is reasonably susceptible to cure and Licensee is diligently and continually pursuing such cure, Licensee shall have a reasonable period of time to effect such cure; provided, further, that such period shall not exceed thirty (30) days from Licensee's receipt of such notice of default.

(l) Licensee shall fail to maintain the insurance required under Article XXI hereof.

(m) Licensee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under any Supplemental License and such failure shall continue for a period of thirty (30) days after there shall have been given to Licensee a written notice specifying such failure and requiring it to be remedied; provided, however, that if any such default is reasonably susceptible to cure and Licensee is diligently and continually pursuing such cure, Licensee shall have a reasonable period of time to effect such cure; provided, further, that such period shall not exceed ninety (90) days from Licensee's receipt of such notice of default.

Section 4.2: Remedies. Upon the occurrence of any Event of Default and the expiration of notice and right to cure provisions, if any, pursuant to Section 4.1 hereof, Licensor may terminate the specific related Supplemental License immediately by written notice to such effect given to Licensee and/or exercise any other remedies available to it in law or equity. In addition, upon the occurrence of an Event of Default under Section 4.1(d) arising in whole or in part from the gross negligence or willful misconduct of Licensee or any of its officers, employees, agents, contractors, servants, representatives or invitees, Licensor may terminate any or all of the Supplemental Licenses immediately by written notice to such effect given to Licensee and/or exercise any other remedies available to it in law or equity.

Section 4.3: Obligations of Licensee Upon Termination or Expiration; Options of Licensor. (a) Subject to the terms of Section 4.3(b), upon termination, failure to renew, or expiration of any Supplemental License, Licensor shall have the following options in connection with the related Licensed Area and SF:

- (i) Licensee shall remove its Ancillary Equipment within thirty (30) days of the date of the termination, failure to renew, or expiration of the related Supplemental License. Licensor may, within one hundred eighty (180) days of the date of termination, failure to renew, or expiration of the related Supplemental License, notify Licensee that Licensor desires that Licensee remove the SSS from the Licensed Area, in which case Licensee, at its sole cost and expense, shall remove such SSS within one hundred eighty (180) days of receipt of such notice. Licensee shall promptly repair any damage to Licensor's property occasioned by all such removals at Licensee's sole cost and expense and in a good and workmanlike manner. Licensee shall have no right to

remove the SSS without the approval of Licensor, which approval may be given or withheld in the absolute discretion of Licensor.

(ii) If Licensor does not request or withholds its approval of the removal of the SSS, Licensor shall have the option to (A) retain such SSS as its own for such use as it deems appropriate, (B) enter into another agreement for the use of the whole or any part of the SSS and the Licensed Area, including the remaining equipment and facilities, for any term, for any sum, and with any person, firm, or corporation which it may deem suitable, and for any purpose which it may deem appropriate or (C) remove or cause to be removed such SSS and any related equipment and facilities. In any such event Licensee shall cooperate with Licensor, at no cost to Licensor, to transfer title and ownership of the SSS to Licensor.

(iii) If Licensee fails, on a timely basis, to remove the Ancillary Equipment, or to remove the SSS after receipt of a request from Licensor pursuant to subparagraph (i) above, Licensor shall have the option to remove or cause to be removed such equipment and facilities, in which case Licensee shall pay all of the actual costs and expense associated with such removal upon demand by Licensor, including, without limitation, the Licensor's Force Account Charges.

(b) In the event that Licensor terminates a Supplemental License in accordance with the provisions of Section 6.2 of this Master License Agreement, Licensee shall have the right to remove the SSS, at its sole cost and expense by giving Licensor notice of such intention to remove within thirty (30) days of the date of termination. If Licensee notifies Licensor that it intends to remove the SSS, Licensee shall have completed such removal within one hundred eighty (180) days after the date of termination.

If Licensee does not notify Licensor of its intent to remove the SSS within such thirty day period following termination under Section 6.2, Licensor shall have the right to exercise the options set forth in Section 4.3(a) in connection with such termination.

Section 4.4: Survival. The provisions of this Article IV shall survive any termination, failure to renew, or expiration of each applicable Supplemental License.

#### **Article V. License Fee and Security**

Section 5.1: License Fee. The compensation arrangements, if any, for each Supplemental License shall be set forth in the related Supplemental License Agreement.

Section 5.2: Payment Terms. The payment terms, including the payment address and provisions relating to late payment, shall be set forth in the related Supplemental License Agreement.

Section 5.3: Security Deposit for Licenses. Upon execution and delivery of this Master License Agreement, Licensee shall deposit \$ as the security deposit hereunder. In addition, upon execution and delivery of each Supplemental License Agreement by Licensee, Licensee shall deposit with Licensor a certified check in accordance with the terms of such Supplemental License Agreement as the applicable security deposit.

Licensor may use, apply, or retain all or any part of the security deposits and earnings thereon, if any, under this Master License Agreement and all Supplemental License Agreements to the extent required for the payment of any license fees or any other sum as to which Licensee is in default or for any sum Licensor may expend or may be required to spend by reason of Licensee's default in respect of any of the terms, covenants and conditions of any Supplemental License. If the security deposit under this

Master License Agreement or any Supplemental License Agreement should be diminished by reason of such application, Licensee shall, within thirty (30) days after written notice from Licensor, deposit additional money to restore such security deposits to the full amount as specified herein and in the Supplemental License Agreements. In the event that Licensee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of the applicable Supplemental License after the date fixed as the end of the Supplemental License term, Licensor shall return the security deposit under such Supplemental License to Licensee within sixty days of such expiration, to the extent not otherwise applied.

**Article VI. Availability, Suitability and Relocation of Licensed Area**

Section 6.1: Failure to Make Licensed Area Available. If Licensor is unable to make any Licensed Area or any part thereof available for use on the Commencement Date, or at any time thereafter, for any reason whatsoever except its willful failure, including, without limitation, (i) the holding-over or occupancy of any licensee, sublicensee, tenant or occupants or (ii) the construction, reconstruction or repair of all or a part of Licensor's transportation facilities, Licensor shall not be subject to any liability for such failure to make such Licensed Area available for use by Licensee except that the applicable license fee payable under the related Supplemental License shall be abated for the duration of the unavailability. Under such circumstances, the validity of such Supplemental License shall not be impaired nor shall the same be construed in any wise to extend the term of such Supplemental License. If Licensor is unable to make any Licensed Area available for use within twelve (12) months of the Commencement Date, Licensee shall have the right to terminate the applicable Supplemental License without penalty or any further obligation to Licensor.

Section 6.2: Relocation of Licensed Area. If Licensor, in its sole and absolute judgment reasonably exercised, determines that it requires the use of the whole or any part of a Licensed Area for the benefit of the Licensor this License may be terminated by Licensor effective upon the end of any calendar month during the term hereof on not less than sixty (60) days' prior written notice to such Licensee; provided, however, that, before delivering such written notice of termination, Licensor shall use its good faith efforts to provide for relocation of the related facilities of Licensee installed under such Supplemental License to location approved by Licensor. In all such circumstances, the full cost and expense of such cessation and relocation shall be paid by Licensee and Licensee shall cooperate with Licensor in making such relocation. Should Licensee refuse to pay the full cost and expense thereof, or should Licensee refuse to so

cooperate with Licensor, Licensor shall thereupon be relieved of any obligation it may have hereunder to provide for such relocation and Licensor shall be free to terminate such Supplemental License as provided in this paragraph. Licensor shall also have the right to use the whole or any part of any Licensed Area in the event of an emergency which imperils the safety or operation of Licensor's transportation facilities, such use by Licensor to be for a term of time necessary to abate or correct such emergency and shall be made upon such advance notice to Licensee as may be reasonable under the circumstances. Licensor shall take reasonable precautions to safeguard Licensee's SF during any such use or occupancy of such Licensed Area.

#### **Article VII. Construction and Installation**

Section 7.1: Zoning and Other Approvals. Licensee shall, at Licensee's sole expense, (i) comply with all laws, orders, ordinances, regulations and directives of applicable federal, state, and local authorities or regulatory agencies, including without limitation, the Federal Communications Commission, and (ii) be responsible for obtaining all zoning and other governmental permits or approvals required by applicable law relating to the construction, installation and operation of its solar facilities within a Licensed Area and shall not, without Licensor's prior written consent, which consent may be withheld at the sole discretion of Licensor, rely on any exemption from local law, ordinance or regulation derived from Licensor's status as a public benefit corporation.

It is understood and agreed that Licensee's ability to use a Licensed Area is contingent upon its obtaining all of the certificates, permits and other approvals that may be required by governmental authorities and community boards, as applicable, as well as satisfactory geotechnical investigations.

If (i) Licensee is unable to obtain all zoning and other governmental permits or approvals required by applicable law relating to the construction, installation and operation of its solar facilities within a Licensed Area within twenty-four (24) months of the Commencement Date, (ii) Licensee reasonably determines that it is highly unlikely that such Approvals will be obtained within twenty-four (24) months of the Commencement Date, or (iii) Licensee determines that the geotechnical conditions at the Licensed Area do not permit construction of the SF, Licensee shall have the right to terminate the applicable Supplemental License without penalty or any further obligation to Licensor within twenty-four (24) months of the Commencement Date. Upon such termination, the applicable Supplemental License shall become null and void and the parties shall have no further obligations, including the payment of money, to each other relating to the applicable Supplemental License Agreement, except for any payment obligation outstanding on the date of such

termination. The covenants, rights and obligations of a party which, by their nature, would extend beyond the voiding, termination, cancellation or expiration of the applicable Supplemental License Agreement shall survive such voiding, termination, cancellation or expiration.

Section 7.2: Plans and Specifications. Subject to Articles VIII and IX hereof, the plans and specifications for any and all construction, installation, maintenance and repair (the "Work") of the Ancillary Equipment and the SSS, must first be approved in writing by the Chief Engineer. Licensee shall include in the plans and specifications a list of all materials to be used in connection with the Work. All Work by or on behalf of Licensee shall be subject to such approval, and shall be conducted in such a manner as not to interfere with or endanger passengers or interfere with the operations of Licensor. Licensee shall construct the SSS and install the Ancillary Equipment strictly in accordance with approved plans and specifications and at the times, in the phases and in the manner approved by the Chief Engineer. Licensor shall have the right to verify by inspection that the construction of the SF is in compliance with such plans and specifications. The cost of such inspection, calculated as a Force Account Charge, shall be reimbursed by Licensee to Licensor. No such inspection of failure to inspect shall impose any liability on Licensor or relieve Licensee of any liability hereunder.

Section 7.3: Phasing and Scheduling of Work. The scheduling and phasing of the Work shall be subject to the prior written approval of the Chief Engineer.

Section 7.4: Work is the Responsibility of Licensee. The Work, including, but not limited to, the preparation of the Licensed Area for the construction and installation of the SF and related cables and utilities, and including the removal of obstacles, if appropriate, shall be the sole responsibility of Licensee. All of the costs and expenses related to the Work shall be the sole responsibility of Licensee.

Section 7.5: Work to be in Accordance with Law. The Work shall be undertaken and performed in accordance with (i) all applicable law, including, without limitation, the laws of the United States of America and the State of New York, and (ii) Licensor's standards and requirements. At Licensee's request, Licensor shall arrange a meeting with the Chief Engineer to discuss the Licensor's standards and requirements that will be applicable to the work performed in connection with the Licenses.

Section 7.6: Workmanship. Materials and workmanship employed in the Work shall be in every respect in accordance with the best modern practice and shall be designed to protect the safety and efficiency of Licensor's facilities, operations and employees.

Section 7.7: Licensor Supervision. All Work shall be under the supervision of Licensor, but this shall not relieve Licensee from any liability on account of accidents occurring by reason of or in connection with such work, or from any of its indemnity agreements hereinafter set forth. Licensee will provide the Chief Engineer with 3 days prior written notice of the commencement of any Work. It is understood and agreed that the sole purpose for Licensor's supervision of the Work is to insure (i) that Licensee's conduct of the Work is in full compliance with the plans and specifications as approved by the Chief Engineer, and (ii) that Licensee's conduct of the Work in no way compromises the safe and efficient operation of Licensor's service over Licensor's transportation facilities.

Section 7.8: Markings; As-Built Drawings. Licensee shall mark the location of its cable with cable markers in a manner and to the extent required by Licensor. Upon completion of construction, Licensee shall provide to Licensor accurate maps and drawings, using such formats and technology as specified by Licensor, sufficient to identify clearly the SSS and Ancillary Equipment "as built" on the Licensed Area.

Section 7.9: Utilities. Licensee shall be responsible for obtaining at its own expense the required electric power, water, compressed air, telephone and other utilities required for the Work and the ongoing operation of the SF. Licensor shall have no obligation to provide electric power to Licensee.

Licensee shall have no right to draw electricity and other utilities from the existing utilities serving the Licensor's transportation facilities. Licensor agrees to cooperate to facilitate access by such utilities to the Licensed Area. Licensee shall pay the full cost for all utilities serving the SF.

Section 7.10: Storage and Staging. Licensee may not store any materials, equipment or debris on or within Licensor's property, including a Licensed Area, without the prior written consent of Licensor.

Section 7.11: Safety and Sanitation. (a) No employees, agents, contractors, representatives or servants of Licensee shall be permitted into any Licensed Area unless they have received the appropriate safety certification from Licensor, which certification may require training and supervision from Licensor. All costs and expenses associated with such certification by Licensor shall be paid by Licensee to Licensor upon demand. (b) Neither Licensee nor its agents, contractors or employees shall deface or damage the property of Licensor, or deposit or scatter any rubbish, waste, or litter in or about any Licensed Area of Licensor. The Licensee shall, at its own expense, promptly remove therefrom any and all rubbish, waste and litter deposited by it or its agents, contractors or employees.

**Article VIII. Maintenance of Licensed Area; Access; Licensee's SF**

Section 8.1: Maintenance. (a) Licensee, at its own cost and expense, shall at all times during the term of each Supplemental License, keep and maintain all installations made by it, including the SF and any appurtenances, in a safe, suitable and proper condition. Any and all damage to such installations shall be repaired and made good by Licensee, provided, however, that in connection with any damage to such installations caused by Licensor, its agents, servants or employees, Licensee shall be entitled to an offset of the net cost of such repair (the actual and reasonable cost of such repairs less all insurance proceeds received by Licensee related thereto) against the license fees due to Licensor under the applicable Supplemental License (but not including any offset to any co-location license fees due to Licensor under any co-location sublicenses). In connection with any such offset, Licensee shall submit whatever evidence and certifications of expense and insurance related matters as shall be requested by Licensor. In the event that the applicable Supplemental License Agreement shall terminate prior to the exhaustion of the offset, Licensee shall be entitled to no additional compensation in any form whatsoever. Notwithstanding any other provision of this Master License Agreement or any Supplemental License Agreement to the contrary, Licensor shall have no other obligations with respect to damages to such installations caused by Licensor, its agents, servants or employees, and Licensee expressly waives any rights to claim any additional damages, including, without limitation, claims for consequential or incidental damages or losses due to the interruption of its service.

(b) Any and all damage to a Licensed Area or other property of Licensor caused by Licensee, its agents, servants, or employees shall be promptly repaired and made good by Licensee at its sole cost and expense or, as Licensor may elect, by Licensor, provided, however, that if such repairs are not related to the safety or operations of Licensor's transportation system and Licensor shall elect to itself repair or make good such damage, it shall give notice to Licensee of such election and Licensee shall have thirty (30) days following such notice to complete such repairs itself, and if such repairs are not completed by Licensee within such period, Licensor may itself repair and make good such damage. If Licensor shall utilize its own forces to perform such repairs, the costs shall be based on the relevant MTA Operating Agency's Force Account Charges for such work as more fully set forth in Article X of this Master License Agreement.

(c) Licensee shall have access to a Licensed Area, to conduct normal maintenance, only with the consent of Licensor, after written notification to the Chief Engineer three weeks in advance of such access requirement, and as otherwise set forth herein. Exceptions to the notice provision hereof may be granted only by the Chief Engineer in his/her sole discretion. Any additional rights of access to the Licensed Area shall be set forth in the applicable Supplemental License Agreement.

(d) Excepting only such periods of time of outage beyond the reasonable control of Licensee, Licensee shall continuously monitor, operate and maintain the SF during the Term of this License Agreement. Licensee shall provide a management organization to support the SF and provide Licensor with periodic reports regarding operating information and performance of the

SF and its management of the RF environment within the Licensor's premises, including but not limited to:

- (a) Monitoring the SF for unauthorized transmissions;
- (b) Making technical recommendations to Licensor's technical staff for the resolution of any radio frequency problems related to the SF;
- (c) Attending both routine and emergency meetings with Licensor's staff concerning radio frequency issues and planning;
- (d) Performing all frequency modulation and interference tests required to maintain the operation of the SF throughout the Term; and
- (e) Evaluating and correcting of any interference problems originated by the SF and affecting SF or other Licensor systems.

(4) No Interference with Licensor Operations. Notwithstanding anything to the contrary hereof, construction of the SF by Licensee shall be done in such a manner which does not materially interfere with the operations of Licensor, and in completing such construction, Licensee will not store construction Equipment or materials on Licensor property without the prior written consent of Licensor; provided, however, that Licensor's consent shall be given with respect to the Equipment and materials staging and storage areas described and depicted in attached Exhibit .

Section 8.2: Licensee's SF. Licensor shall take reasonable precautions to protect the integrity, and avoid disturbance, of Licensee's SF when undertaking or permitting third parties to undertake, construct, maintain, install or repair work in a Licensed Area.

#### **Article IX. Emergency Repairs to SF**

(1) In the event of an emergency, Licensee shall have immediate access to the applicable Licensed Area provided the Chief Engineer has been advised of such emergency condition as soon as reasonably practicable in advance of or after any such entry by Licensee onto such Licensed Area. Should Licensee neglect to attend to an emergency which threatens the operation or safety of Licensor's customers, employees, or facilities Licensor shall have the absolute right to take any and all action necessary to protect the operation and safety of the service over Licensor's transportation facilities and Licensor shall not be liable for any damage to said Licensed Area or to the SF located therein. In such event, the provisions of Article X hereof shall apply. Licensor shall maintain a

telephone number for Licensee to contact Licensor on twenty-four (24) hour by seven (7) day a week basis. Such number shall be set forth in the applicable Supplemental License Agreement.

**Emergency Telephone Contact:**

Licensee shall maintain the following telephone numbers, e-mail addresses or other information for Licensor to contact Licensee on a twenty-four (24) hour, seven (7) days per week basis:

Licensor shall maintain the following telephone numbers, e-mail addresses or other information for Licensee to contact Licensor on a twenty-four (24) hour, seven (7) days per week basis:

**(2)Licensor's Duty to Repair and Maintain.**

(a) Licensor's Assets. Licensor shall be responsible for any and all repairs and maintenance to the Licensor Assets. In the event that any repairs to Licensor Assets may be required as a result of damage caused by negligence of Licensee, or any of its respective agents, employees, invitees or licensees, those repairs shall be at the sole cost and expense of Licensee. Otherwise, any repair and maintenance of Licensor Assets shall be at Licensor's sole cost and expense.

(b) No Licensor Repair or Maintenance Obligation for SF. Licensor shall have no repair or maintenance obligations for the SF. Licensee shall be solely responsible, at its sole cost and expense, for the repair and maintenance of the SF and used by the Licensor.

**Article X: Alterations to the SF (requires Engineering/Technical review)**

Section 10.1: Installation; Replacement. After completion of the improvements provided for in this agreement, Licensee may, with Licensor's advance written consent, make such alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the SF as Licensee may reasonably consider necessary and desirable to provide communications services as contemplated by this License Agreement and the Sublicensee Agreements. All such Alterations shall be done at the sole cost and expense of the Licensee, and at such times and in such manner as Licensor may from time to time designate. Any Alterations that the Licensee wishes to make to any equipment shall be performed under the

direction and control of Licensee, and Licensee shall be responsible for the performance of such Alterations in accordance with all the terms of this License Agreement as if said Alterations were Alterations being made to the SF.

Any Alterations shall be of high quality, shall be of fireproof construction according to the standards of the local rating organization, shall be constructed in good and workmanlike manner and shall otherwise be in full and complete accordance with all legal requirements and Licensor Construction Safety Standards. Except as otherwise specifically provided in this License Agreement, Licensee shall obtain all necessary permits, including any discretionary permits, for any Alteration.

Except as provided below, approval of any Alterations proposed to be made in or to any portions of the Licensed Area that would result in additional cable, or new or additional equipment of different functionality from that installed as part of the SF, or any penetrations to the Facilities shall be subject to the sole discretion approval of Licensor and may require the payment of additional compensation.

Section 10.2. Additional Submittals. Within thirty days of completion of any Alterations, Licensee shall deliver supplemental documentation as required by Licensor.

Section 10.3 Right of Entry. Licensor shall have the right to enter the Licensed Area at any and all reasonable times throughout the Term of this Agreement for any reasonable purpose, including, without limitation, for the purpose of ascertaining the condition of the Licensed Area or whether Licensee is observing and performing the obligations assumed by it under this Agreement; provided, that Licensor shall not interfere unduly with Licensee's operations, nor shall Licensor remove, relocate, alter, modify or otherwise tamper with any of Licensee's equipment in the Equipment Room. This right shall impose no obligation on Licensor to make inspections to ascertain the condition of the Licensed Area, and shall impose no liability upon Licensor for failure to make inspections.

**Article XI. Licensor's Construction and Interruptions (requires Engineering/Technical review)**

Licensee acknowledges and agrees that Licensor may from time to time make capital improvements to

the Facilities that are necessary or desirable for the general use and utility of the Facilities for transportation purposes, and that such construction work may request or necessitate the interruption of the SF in the Licensed Area, and other equipment installed in the Facilities. Any such construction activity is entirely discretionary on the part of Licensor. If requested by Licensor, upon at least sixty (60) days advance written notice, Licensee shall, at its sole cost and expense, temporarily relocate or otherwise disconnect the portions of the SF requested by Licensor in order to enable Licensor to conduct and perform its work. Licensee hereby waives any and all rights or claims of any kind based on constructive eviction, nuisance or interference with or enjoyment of the rights granted under this License Agreement which may arise in connection with, or result from such construction activities; provided however, Licensor shall use commercially reasonable efforts to minimize disruption of the SF caused by such construction activities.

#### **Article XII. Force Account**

If at any time during the Work, Licensor should in its sole discretion deem it desirable or necessary in connection with the protection of its operations, property, employees, customers or other persons (i) to deploy officers, inspectors or other personnel or (ii) to take other measures, including, without limitation, traffic rerouting or service interruptions, then Licensor shall have the right to place such personnel or take such measures, at the sole risk, cost and expense of Licensee. Licensee hereby covenants and agrees to bear the full risk, cost and expense thereof and to pay Licensor promptly, in advance of the Work, upon receiving from Licensor a written demand for such payment, which costs and expense shall be calculated in accordance with the "Schedule of Rates for Work Performed for Outside Parties" then in effect or such other fee structure which Licensor may prescribe. Upon the submission of plans

and/or a description of the Work to be performed, Licensor shall provide Licensee a written estimate of Licensor's Force Account Charges. Upon completion of the Work, Licensor shall provide to the Licensee a written invoice or statement itemizing Licensor's Force Account charges. Should the amount originally deposited by Licensee have exceeded the charges, the difference shall be returned to Licensee. Should the Force Account charges exceed the amount originally deposited by Licensee, Licensee shall reimburse Licensor for such difference within thirty (30) days of its receipt of such invoice or statement. Licensor's failure to furnish such personnel or to take such measures shall not relieve Licensee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability or obligation to Licensee on the part of Licensor. Upon being notified that the personnel or measures referred to in this paragraph have been deemed desirable or necessary by Licensor, Licensee shall not commence or continue the related Work unless and until such personnel or measures are in place.

#### **Article XIII. Title to SF**

Section 13.1: Title to SF. During the term of a Supplemental License (including any renewals hereof), title to and ownership of all equipment and facilities comprising each SF provided by Licensee shall be and remain in Licensee; provided, however, that Licensee shall not permit any Supplemental License and privilege granted hereunder and under each Supplemental License Agreement, any Licensed Area or any of the facilities and equipment comprising the SSS to be encumbered by any mortgage, lien or other security interest of any nature whatsoever if such mortgage, lien, or other security interest would be inconsistent with, or in any way conflict with, Licensor's rights under this Master License Agreement or any Supplemental License with respect to any Licensed Area and Licensee's facilities and equipment during the term of the applicable Supplemental License (including any renewals thereof) and upon termination or expiration of the applicable Supplemental License. Licensor shall not undertake any action or inaction that would cause or facilitate the attachment or a lien or other encumbrance inconsistent with Licensee's title and interest in the SF and electrical network, as set forth herein. Licensor waives any lien rights it may have concerning the Licensee's Ancillary Equipment which are deemed Licensee's personal property and not fixtures, and Licensee has the right to remove same at any time without Licensor's consent.

Licensor acknowledges that Licensee has or may enter into one or more financing arrangements, including promissory notes and financial and security agreements, for the financing of the Ancillary Equipment with third party financing entities. In connection therewith, Licensor (i) consents to the installation of the Ancillary Equipment, (ii) disclaims any

interest in the Ancillary Equipment, and (iii) agrees that the Ancillary Equipment shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any license fees due or to become due and that such Ancillary Equipment may be removed at any time without recourse to legal proceedings.

Section 13.2: Discharge of Liens. Should any mechanic's lien be filed against any Licensed Area or other facilities, or against any part of the premises of Licensor, on account of labor or material furnished or alleged to have been furnished for or in connection with the construction, installation, maintenance work which Licensee is or may be required to perform hereunder, such lien shall be satisfied or bonded or discharged by Licensee within 30 days after the filing thereof.

#### **Article XIV. (Intentionally Deleted)**

#### **Article XV. Licensee's Representations and Warranties**

Licensee represents and warrants to Licensor that:

(a) Licensee is a **[corporation/partnership/joint venture]** qualified to do business in the State of New York and has the corporate power and authority to carry on its business as presently conducted, to own or hold under license or lease its properties and to enter into and perform its obligations under all of the Licenses.

(b) The execution, delivery and performance by Licensee of this Master License Agreement have been duly authorized by all necessary corporate action on the part of Licensee and do not and will not require the consent of any **[stockholders/partners/joint venturers]** of Licensee or any trustee or holder of any indebtedness or other obligation of Licensee.

(c) This Master License Agreement has been duly executed and delivered by Licensee and constitutes the legal, valid and binding agreement of Licensee, enforceable against it in accordance with its terms.

(d) Neither the execution, delivery or performance by Licensee of this Master License Agreement, nor the consummation of the transactions contemplated hereby, nor compliance by Licensee with the provisions hereof, conflicts or will conflict with, or results or will result in a breach or contravention of any of the provisions of, **[the Certificate of Incorporation and Bylaws/partnership agreement/joint venture agreement]** of Licensee, or any provision of, including, without limitation, any statute, order, judgment, decree, rule or regulation of any court or governmental agency or body having jurisdiction over Licensee or its real or personal property, or any indenture, mortgage, lease, agreement or instrument to which Licensee is a party or by which the property of Licensee is bound or affected.

(e) There is no litigation or governmental or administrative proceeding pending, or, to the best knowledge of Licensee, threatened, against either Licensee or its real or personal property, which questions the validity or enforceability of this Master License Agreement or any Supplemental License or which, if decided adversely to the interests of Licensee, would have a material adverse affect on the business or financial condition of Licensee or materially and adversely affect the ability of Licensee to perform its obligations under this Master License Agreement or any Supplemental License.

(f) Licensee is financially solvent, is experienced in and competent to perform the Work, and has all the resources necessary to perform its obligations under the Licenses, including the Work.

(g) At the time of the execution of this Master License Agreement, Licensee has, and during the entire term of all of the related Licenses, and any extension thereof, Licensee will make good faith efforts to maintain, a license from the or a successor governmental agency authorized to issue a license enabling Licensee to providethe SFs within all of the Licensed Areas. In the event that by action of any governmental agency the License expires, is terminated or revoked, Licensee diligently and in good faith shall take such actions as shall be required to, as applicable, preserve or reinstate the License.

#### **Article XVI. Risk of Loss**

Licensee assumes all risk of loss or damage to the equipment and property of every nature and description, brought, placed or kept by Licensee at or within each of the Licensed Areas or on Licensor's transportation facilities in connection with the exercise of any rights hereunder, whether such loss or damage be due to (i) the acts, omissions or negligence of Licensor or its employees or agents; (ii) fire, burglary, theft, vandalism or riot; or (iii) any other cause whatsoever (other than the gross negligence or willful misconduct of Licensor or its employees or agents). Neither Licensor, nor it successors or assigns shall be liable to Licensee, its agents or employees for any injury to the facilities of Licensee, or to the person or property of any of Licensee's agents or employees while on the premises of Licensor in connection with any work performed by Licensee under any Supplemental License. In no event shall Licensor be liable to Licensee, Licensee's customers or any other person on account of damage to or loss of any such property, and Licensee agrees that this clause constitutes a waiver of subrogation. Licensor shall not be liable in damages, including, without limitation, consequential damages, or otherwise to Licensee, its agents or representatives or to any person claiming rights derivative from Licensee (whether or not in privity to Licensee) for any interruption or stoppage of transmission or other service

over the facilities installed by Licensee under any Supplemental License by any reason or cause whatsoever.

**Article XVII. Licensed Area Testing; No Interference**

Section 17.1: Licensed Area Testing. Licensor acknowledges that Licensee, at its option following full execution of any Supplemental License Agreement, may perform or obtain engineering surveys, structural analysis reports, or any other testing or reports which may be required in order for Licensee to occupy the applicable Licensed Area as described in such Supplemental Agreement. In the event that such testing and reports reveal conditions that do not allow Licensee to operate its SF from a Licensed Area, Licensee shall have the right to terminate the related Supplemental License without penalty or any further obligation to Licensor.

Section 17.2: No Interference. Licensee agrees to install a SF of the type and with frequencies which will not cause interference to the equipment of Licensor. In the event Licensee's SF causes such interference then, at Licensee's sole cost and expense, Licensee shall take all steps necessary to correct and eliminate such interference. If (i) Licensor notifies Licensee that said interference affects Licensor's transportation operations, including, without limitation, the safety thereof, or (ii) said interference cannot be eliminated within a reasonable length of time not to exceed seventy-two (72) hours after notice, Licensee agrees to immediately suspend using the related SF equipment which is creating the interference, except for short tests necessary to determine the elimination of the interference. If, following installation of Licensee's SF, Licensor installs equipment or commences operations which result in undue interference with Licensee's operation of its SF, Licensee shall give Licensor notice of such interference and if Licensor is unable or unwilling to remedy or suspend such interference within thirty (30) days following receipt of such notice, Licensee may terminate the related Supplemental License without penalty or any further obligation to Licensor.

**Article XVIII. Taxes and Assessments**

Licensee agrees and covenants to pay all taxes, assessments, use and occupancy taxes, charges for public utilities, excises, levies, and the like, that are actually levied on any Licensed Area and are related to the Licensee's occupancy or operation of the SF or the occupancy or operation of a SF by a sublicensee, or that arise out of the construction, maintenance, or operation of a SF system, including any such taxes, assessments, and the like, or any increases in such taxes, assessments and the like, imposed on Licensor by virtue of the construction, maintenance and operation of the SF system. Licensor shall provide to Licensee reasonable documentation in Licensor's possession with respect to such

taxes, assessments and the like imposed on Licensor and for which Licensee is responsible for payment pursuant to the terms of this Article XVI. Licensor, at its option, may require Licensee to pay such taxes, assessments and the like directly to the appropriate governmental or other authority, or Licensor may itself pay such taxes, assessments, and the like and seek reimbursement from Licensee which agrees to make such reimbursement within thirty (30) days of its receipt of such demand for payment or reimbursement from Licensor.

**Article XIX. Employment Law; Prevailing Wage; Labor Harmony**

Section 19.1: Applicable Employment Laws. Licensee and any person, firm, or corporation furnishing labor in connection with the license and privilege granted herein, shall comply with all provisions and requirements of applicable statutes, laws ordinances and government rules and regulations governing employment including, without limitation the New York State Labor Law, the New York State Workers' Compensation Law, the New York State Unemployment Insurance Law, the New York State Labor Relations Act or the National Labor Relations Act, whichever may be applicable, the Fair Labor Standards Act, the New York State Human Rights Law, and the Civil Rights Act of 1964, as amended.

Section 19.2: Prevailing Wages. If applicable, the prevailing rate of wages shall be paid to all workers, mechanics and laborers, employed in the performance of any construction, installation, maintenance, and repair work at, or within, any Licensed Area.

Section 19.3: Labor Harmony. Licensee shall take no action, or permit any of its contractors, agents, or servants, to take any action, which would interfere with Licensor's labor harmony.

**Article XX. Compliance with Environmental Laws.**

Licensee shall not cause, permit or suffer any Hazardous Substance to be used, stored, generated or disposed of on or in any Licensed Area by Licensee or Licensee's agents, employees, contractors or invitees, without first obtaining Licensor's written consent, which may be withheld at Licensor's sole and absolute discretion. If Hazardous Substances are used, stored, generated, or disposed of on or in a Licensed Area, or if the Licensed Area becomes contaminated in any manner by any hazardous Substance used, stored, generated or disposed of on or in a the Licensed Area, Licensee shall indemnify, defend (with counsel approved by Licensor), and hold harmless Licensor and the other Indemnitees (as hereinafter defined) from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of such Licensed Area, damages because of adverse impact on

marketing of the Licensed Area, and any and all sums paid for settlement of claims and for attorneys', consultant, and expert fees) arising during or after the term of this Master License Agreement by reason of such use, storage, generation or disposal of Hazardous Substances or such contamination. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration required or requested by a federal, state or local agency or political subdivision or by any organized labor group, including, without limitation, any such costs associated with the contamination of adjacent property or ground water as a result of Licensee's activities at the Licensed Area. In addition, if Licensee causes, suffers or permits the presence of any Hazardous Substance on the Licensed Area, Licensee shall promptly, at its sole expense, take any and all necessary actions to return the Licensed Area to the condition existing before the presence of any such Hazardous Substances on the Licensed Area, provided, however, that Licensee shall first obtain Licensor's approval for any remedial action.

Licensee shall inspect each and every Licensed Area where Work is to be performed pursuant to this Master License Agreement and any Supplemental License Agreement, and become familiar with the conditions of the Licensed Areas. Licensee agrees that no claim whatsoever shall be made against Licensor for costs, damages or expenses as a result of the conditions of the Licensed Areas.

Licensee, at its own cost and expense, shall comply with any existing or hereafter enacted federal, state or local environmental laws or regulations which affect Licensee's operation and/or occupancy of the facilities installed on the Licensed Areas covered by this Master License Agreement and any Supplemental License Agreements. Licensee shall be solely responsible for obtaining all required permits and approvals before commencing any construction work at a Licensed Area and for making all necessary submissions to appropriate agencies charged with enforcing applicable environmental laws or regulations which affect Licensee's operation of facilities installed pursuant to this Master License Agreement and any Supplemental License Agreements. Unless Licensor deems it inappropriate or inconsistent with the public interest, Licensor shall assist Licensee in obtaining required permits and approvals and making submissions to regulatory agencies. Licensee shall bear the cost and expense of all necessary applications and permits.

Licensee may, at its own cost and expense, conduct site investigations as part of its initial site evaluation, including any tests and soil borings necessary to determine the presence or absence of environmentally sensitive materials and Hazardous Substances at a Licensed Area, with the approval of Licensor. Such approval shall not be

unreasonably withheld, conditioned or delayed. If a site investigation reveals the presence of contamination, Licensee shall conduct any required cleanup or remediation at its expense. If Licensee does not proceed with the development and use of the Licensed Area because of the environmental conditions discovered thereon, Licensee may terminate the related Supplemental License without penalty or any further obligation to Licensor other than its obligation to cleanup or remediate as required. Licensee shall treat and contractually require any contractors to treat as strictly confidential all environmental data compiled in connection with any site investigations, including without limitation, any non-public facts, data, or other information regarding the condition of the investigated property, any professional conclusions and opinions, and all drawings, specifications, technical documents, legal documents, sampling and analytical data, photographs, reports and all copies thereof related to the Licensor, the Licensor's property and facilities and the Licensor's use thereof. Licensee and its contractors shall not disclose to any third party any such information without the prior written consent of the Licensor, except if required by applicable law. Licensee shall immediately notify Licensor when Licensee or its contractors believe that disclosure of such information is required by law or when Licensee or its contractors receive any request or demand for such disclosure, and shall cooperate with the Licensor in addressing any such obligations, requests, or demands in light of the parties' intention to maintain such information as strictly confidential except as required by law.

If at any time, during construction or otherwise, contamination is revealed on a Licensed Area, Licensee must notify the appropriate authorities and Licensor of said discovery, in accordance with applicable environmental laws and regulations, and Licensee shall, at its own cost and expense, undertake any monitoring or remedial activities required pursuant to any applicable laws or regulation unless the presence of such contamination is the result of negligence or willful actions of Licensor occurring or undertaken after the effective date of this Agreement. Licensee, at its own cost and expense, shall promptly provide to Licensor copies of all submissions made to any environmental regulatory agency in connection with its responsibilities pursuant to this paragraph.

If site remediation must be undertaken as a result of (i) Licensee's discovery of pre-existing contamination in the course of investigations of environmental conditions in the Licensed Area that it conducts or other activities of Licensee that disturb the ground, subsurface or groundwater in the Licensed Area, (ii) Licensee's stored or generated materials not pre-existing at the Licensed Area or (iii) the actions or inactions of Licensee or its officers, agents, contractors or employees, Licensee shall, at its own cost and expense, prepare and submit the required plans and

financial assurance and carry out an approved remedial action plan to completion. Licensor shall have the right to approve any such remedial action plan prepared by Licensee before it is submitted to the appropriate regulatory agency. Licensor's approval shall not be unreasonably withheld or delayed. Licensee shall be solely responsible for complying with and completing any approved remedial action plan. The obligations of Licensee set forth in this section of the Master License shall survive the termination of this Master License.

Licensee shall, at all times during the term of a Supplemental License, permit Licensor to have access to the Licensed Area for the purpose of environmental inspections, including, but not limited to, sampling, and for all required environmental remediation and monitoring. Licensor shall provide reasonable advance notice to Licensee of environmental inspections, remediation and monitoring and Licensee shall have the right to have a representative present during any such inspections, remediation and monitoring. Licensee shall, at its own cost and expense, provide all information requested by Licensor for the preparation of any non-applicability affidavits, de minimis quantity exemption applications, or other environmental submissions, and shall promptly sign such affidavits and submissions when requested by Licensor.

#### **Article XXI. General Indemnity**

Section 21.1: Licensee's Indemnity. (a) Licensee covenants and agrees to defend, indemnify and hold harmless, to the extent permitted by law, the Metropolitan Transportation Authority, New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority, City of New York, Metro-North Commuter Railroad Company, State of New York, Connecticut Department of Transportation, American Premier Underwriters, Inc. (including its subsidiaries and affiliates), Consolidated Rail Corporation, National Railroad Passenger Corporation, NJ Transit Rail Operations, Inc., CSX Transportation Inc. & New York Central Lines LLC, Delaware & Hudson Railway Company, Inc., Norfolk Southern Railway Company & Pennsylvania Lines LLC, Housatonic Railroad Company, Providence & Worcester Railroad Company, Long Island Rail Road Company, New York & Atlantic Railway Company, Triborough Bridge and Tunnel Authority, Metropolitan Suburban Bus Authority and Nassau County, and each of them, and their members, directors, officers, employees, agents and servants (the "Indemnitees"), against any and all claims, damages, losses, obligations, penalties, liabilities, costs and expenses, including attorney's fees and disbursements, which may be imposed upon or incurred by or asserted against the Indemnitees, arising from:

(i) any work, use, operation and any other activities in, on, within or about any Licensed Area by Licensee, or any of its employees, agents, representatives, contractors or invitees;

(ii) injuries, including death, to persons, or damage to property, occurring or alleged to have occurred by reason of, or in connection with, or arising out of the license and privilege granted to Licensee hereunder and/or under a Supplemental License, and also against any and all claims for damages, and all liability, loss and expense arising from injuries, including death, to persons, or damage to property, resulting from the presence in or upon any station, structure, facility, car, vehicle or other premises of Licensor, of any article or articles brought or carried by Licensee, its servants, agents, or employees, or the servants, agents, or employees of any person, firm, or corporation with whom or with which the Supplemental License may contract (other than a sublicensee), all in connection with the exercise of its rights or performance of its obligation hereunder or under any Supplemental License Agreement; and

(iii) any use, non-use possession, occupation, condition, operation, maintenance or management of Licensor's transportation facilities, any Licensed Area, and any SF within such Licensed Area (other than a sublicensee's or Licensor's SF, if any), including, without limitation, libel, slander, infringement of copyright, unfair competition or unauthorized use of any trademark, trade name, or service mark, arising out of the material, data, information or other content transmitted or received over the SF.

Notwithstanding the foregoing, Licensor shall be liable to Licensee for the actual reasonable cost of repair and/or replacement of Licensee's facilities and equipment caused as a result of the gross negligence or willful misconduct of Licensor, its employees or agents.

(b) It is the intent of the provisions of this article that Licensee shall defend, indemnify and save harmless, to the extent permitted by law, the Indemnitees and each of them against any and all such claims and liabilities arising out of or in any manner connected with the exercise of the Supplemental License and privilege herein granted whether or not the same may be due to the negligence of Licensee, or of any person, firm, or corporation with whom or with which Licensee may contract in connection with the performance of the Supplemental Licenses, or the exercise of the license and privileges hereby granted, or the negligence of any Indemnitee, or any of their respective agents, servants, or employees except as to occurrences which are solely due to the negligence of an Indemnitee. The term "liability, loss and expense", as used in this Article, shall include and cover, but not limited to any and all liability for the payment of compensation under the Worker's Compensation Law of the State of New York.

## **Article XXII. Insurance**

Section 22.1 Insurance. On or before the Commencement Date, Licensee, shall procure, at its sole cost and expense, and maintain in force at all times during the term of each Supplemental License Agreement, policies of insurance covering all operations to be performed within the Licensed Areas, as herein below set forth, written by companies with an A.M. Best Company rating of A- or better. Licensee shall deliver to Licensor evidence of such policies. These policies must: (i) be written in accordance with the requirements of the paragraphs below, as applicable; (ii) be endorsed in form acceptable to Licensor to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice to the Licensor's Attention – Standards Enforcement & Claims Analyst - MTA, MTA Risk & Insurance Management Two Broadway, New York, New York 10004 by Certified Mail, return receipt requested; and (iii) state or be endorsed to provide that the coverage afforded under the policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to Licensor. The insurance required to be carried by Licensee pursuant to the provisions of this Article may, at Licensee's option, be effected by so-called "blanket", "wrap-up" and/or "master" policies issued to Licensee and/or its affiliates covering the Licensed Areas and other properties owned or leased by Licensee or its affiliates, provided such policies (i) otherwise comply with the provisions of this Master License Agreement and (ii) by endorsement, allocate to each Licensed Area the specified coverage and limits of coverage herein required for all insureds required to be named as insureds hereunder, (iii) a waiver of all rights of subrogation for all damages to the extent damages are covered by insurance required under this Article or any other insurance actually carried by the Licensor. All insurance policies required hereunder shall permit and recognize such waivers of subrogation. Except as otherwise provided herein, policies written on a "claims-made" basis are not acceptable. At least two (2) weeks prior to the expiration, licensee shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies. Except as otherwise indicated in the detailed coverage paragraphs below, self insured retentions and policy deductibles shall not exceed \$100,000, unless such increased deductible or retention is first approved by Licensor. The Licensee shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. The insurance monetary limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies.

- (a) Workers' Compensation Insurance (including Employer's Liability Insurance with limits of not less than \$2,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the laws of the state in which

the work is to be performed. The policy shall be endorsed to include alternate employer's coverage.

(b) Commercial General Liability Insurance

Commercial General Liability Insurance (I.S.O. 2001 Form or equivalent approved by Licensor in the Licensee's name with limits of liability specifically written for this contract in the amount of at least \$100,000,000 each occurrence/\$100,000,000 General Aggregate Limit (other than products-completed operations)/\$100,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Licensor policy available. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed by the Licensee under this agreement;
- Personal and Advertising Injury Coverage;
- Products and completed operations extending one year after project completion;
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be voided, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion

which may otherwise operate to exclude such coverage shall be voided in this respect; and

- Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 version or equivalent approved by the Licensor naming the Licensor, and any other indemnified party including the Indemnitees.

(c) Business Automobile Liability Insurance

(I.S.O. Form CA 00 01 10 01 or equivalent approved by the Licensor). If vehicle enters Licensor's property or is used as part of service provided, in the Licensee's name with limits of liability in the amount of \$2,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The policy shall be extended to include employees of any insured acting in the scope of their employment. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded.

(d) All-Risk Property Insurance. At all times during the term of each Supplemental License, Licensee shall carry property insurance protecting Licensee and each of the Indemnitees (as their respective interests may appear) against all risk of loss to Licensee's real or personal property (including tools and equipment), within or on the Licensed Area and fixtures installed by Licensee therein, in the amount of the full replacement value of such property and fixtures, including any increase in value from increased costs. The Licensee or any Sublicensee shall include an insurer's waiver of subrogation in favor of the Licensor.

(e) Railroad Protective Liability Insurance (ISO-RIMA or equivalent form approved by the Licensor) , covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:

- The Indemnities individually and collectively including its subsidiaries and affiliates naming the Licensor, and any other indemnified party are the "Named Insureds".

- The limit of liability shall be at least \$10,000,000 each occurrence, subject to a \$20,000,000 annual aggregate;
- Indicate the Name of the Licensee to perform the work, the name of the **Licensors** for whom the work is being performed and the Contract description and number.
- Evidence of Railroad Protective Liability Insurance, must be provided in the form of the Original Policy. A detailed Insurance Binder (ACORD or Manuscript Form) will be accepted pending issuance of the Original Policy, which must be provided within 30 days of the Binder Approval.

Section 22.2 - General Requirements Applicable to Insurance Policies

- (a) The Licensee shall furnish evidence of all policies before any work is started to the Standards Enforcement & Claims-Analyst-MTA, MTA Risk & Insurance Management. The Licensors' Certificate of Insurance may be supplied as evidence of such aforementioned policies, *except that evidence of policy e - the Railroad Protective Liability Insurance policy requires the original policy. (The original binder will be accepted pending insurance of the original policy.)*. The Licensors reserves the right, however, to request copies of policies a, b, c, d and e listed in Section 21.1 as well. If the Licensors does exercise its option to request copies of other original policies, the Licensee or its Contractor shall deliver to the Licensors within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be provided on the Licensors' Certificate of Insurance Form; (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds and Named Insureds as required herein; (5) reference each Supplemental Agreement by name, parties' names and date on the face of the certificate; (6) written acknowledgement of subrogation and (7) expressly reference the inclusion of all required endorsements.
- (b) If, at any time during the period of any Supplemental License Agreement, insurance as required is not in effect, or proof thereof is not provided to Licensors, the Licensors shall have the options to: (i) direct the Licensee to suspend work and/or cease

operations; or (ii) treat such failure as an Event of Default.

- (c) Nothing herein contained shall be deemed to limit the Licensee's liability to the limits of liability, or coverage of Policies a, b, c, d or e their renewals, or replacement.
- (d) Compliance with Policy Requirements Licensee shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Licensee shall perform, satisfy and comply with or cause to be performed, satisfied and complied with the conditions, provisions and requirements of the insurance policies.
- (e) Required Insurance Policy Clauses; Waiver of Subrogation.

The Licensee shall include the exact same insurance requirements in any contract or agreement Licensee enters into with others to perform work on Licensee's behalf in connection with this Master License Agreement.

The Licensee hereby waives its right to subrogate against Licensor. In addition, if an insurer would otherwise have a right to subrogation, a written acknowledgment by the insurance company that its right to subrogation has been waived with respect to the named insureds and/or additional insureds named in such policies. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

#### **Article XXIII. Non-Liability of Licensor and Its Personnel**

No member, officer, or employee of Licensor or MTA shall be liable personally to Licensee under or by reason of this Master License Agreement or any Supplemental Licensee any of its covenants, articles, terms, or provisions, nor shall any member, officer or employee of Licensor or MTA be sued individually by Licensee for damages for damages or other relief on account of any breach of this Master License Agreement or any License, or on account of anything which may prevent Licensee from exercising or enjoying the license and privileges herein described.

#### **Article XXIV. Miscellaneous**

##### Section 24.1: Eminent Domain.

a) Total Taking. In the event of a condemnation or a taking of (i) all or substantially all of a Licensed Area or (ii) such portion of a Licensed Area as would prevent its practical use by Licensee for installing and maintaining Licensee's SF thereon, the term of the applicable

Supplemental License shall terminate from the date of title vesting in such proceeding and Licensee shall have no claim for the value of any unexpired term of the applicable Supplemental License. In the event of a taking of all or substantially all of a Licensed Area, any awards payable by reason thereof (each such award being hereafter referred to as an "award") shall be paid as follows:

- x) to Licensor, on its own behalf, the award for the Licensor's interest in the real estate, trade fixtures and other compensable interests in the Licensed Area taken or damaged by such taking, as unencumbered by this Master License Agreement and applicable Supplemental License Agreement and excluding Licensee's SF; and
- y) to Licensee, on its own behalf, the award for Licensee's interest in the SF taken or damaged by such taking.

(b) Partial Taking. In the event of a taking other than as described in paragraph (a) above, the term of this Master License Agreement and applicable Supplemental License Agreement shall not be reduced or affected in any way, and the award or awards shall be paid as follows:

- x) to Licensor, on its own behalf, the award for the Licensor's interest in the real estate, trade fixtures and other compensable interests in the Licensed Area taken or damaged by such taking, as unencumbered by this Master License Agreement and applicable Supplemental License Agreement, and excluding Licensee's SF thereon; and
- y) to Licensee, on its own behalf, the award for Licensee's interest in the SF taken or damaged by such taking.

c) Separate Claims. In any condemnation proceeding, Licensor and Licensee shall have the right to present separate claims for their respective interest in the awards or portions of the awards specified in this Section.

d) Relocation of SF and Other Improvements. Unless Licensee makes other arrangements with the appropriate governmental or quasi-governmental agency or authority, Licensee shall be required to remove at its own cost and expense all or any portion of the SF or other improvements which are located on property condemned or taken, as described above, but excluded from such condemnation or taking by the condemning agency or authority.

e) Notices. Licensor and Licensee shall notify each other immediately of any notice regarding an actual or potential condemnation or taking of a Licensed Area or a SF. Each of Licensor and Licensee agree not to sell their respective interests in a Licensed Area or SC to such agency or authority, in lieu of condemnation, with prior notice to the other.

Section 24.2: Notices. Any notice or demand (other than any license fee statements which are, from time to time, mailed to Licensee) which, under the terms of this Master License Agreement or any License, or under any statute, must or may be given or made by the parties hereto, shall be in writing. Any written notice shall become effective (i) upon personal delivery thereof, including without limitation, by overnight mail or courier service, (ii) in the case of notice by United States mail, certified or registered, return receipt requested, upon receipt thereof, or (iii) in the case of notice by telecopy, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (i) or (ii) above. Any written notice shall either be mailed, certified or registered mail, postage prepaid, or sent in the form of a telecopy, or by overnight delivery service, or by hand. Any written notice shall be directed to the parties at the following addresses:

(a) for Licensor:

Metropolitan Transportation Authority  
347 Madison Avenue  
New York, New York 10017  
Attention: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority  
347 Madison Avenue  
New York, New York 10017  
Attention: General Counsel

(b) for Licensee:

**[ADD NOTICE PROVISION]**

With a copy to:

Either party, however, may designate in writing such new or other address or individual to which such notice or demand shall thereafter be so given, made, or mailed.

Section 24.3: Non Discrimination. (a) Licensee, for itself and its successors and assigns, if any, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in any Supplemental License for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the

Secretary, Part 21, Nondiscrimination - Effectuation of Title VI of the Civil Rights Act of 1964; and as said Regulations may be amended.

(b) In the event of breach of any of the above non-discrimination covenants, Licensee shall be subject to the default provisions hereunder. Should Licensee fail to cure such default conditions in the time provided for herein, Licensors shall have the right to terminate this Master License Agreement and the applicable Supplemental License and to re-enter and repossess all of the applicable Licensed Areas and the facilities thereon, and hold the same as if this Master License Agreement and said Supplemental License had never been made or issued.

(c) Licensee for itself and its successors and assigns, if any, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the Licensed Areas and the furnishing of services thereon, no person on the ground of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, and (3) that Licensee shall use the Licensed Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as to said Regulations may be amended.

Section 24.4: Entire Agreement. This Master License Agreement, together with any applicable Supplemental License Agreements, constitutes the entire agreement between the parties and supersedes all previous oral or written understandings, agreements, commitments, or representations concerning the subject matter of their provisions, and such written agreements may not be waived, except as may be agreed to in a writing executed by Licensors and Licensee.

Section 24.5: Governing Law. This Master License Agreement, together with any applicable Supplemental License Agreement, the rights and obligation of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New York and exclusive jurisdiction shall be in the state and federal courts located in the City of New York.

Section 24.6: Severability. If any part of this Master License Agreement or any Supplemental License is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Master License Agreement or any Supplemental License and the remaining parts of this

Master License Agreement or any Supplemental License shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 24.7: Headings. The headings of the Articles and Sections of this Master License Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

Section 24.8: No Third Party Rights. Nothing in this Master License Agreement or in any Supplemental License is intended to create any third party rights or confer upon any person, firm or corporation, other than the parties hereto and MTA and their successors and assigns, any right, remedy, claim or benefit, express or implied, under or by reason of this Master License Agreement, any Supplemental License or of any term, covenant or condition hereof or thereof.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Master License Agreement the day and year first above written.

**As to Licensor:**

**As to Licensee:**

METROPOLITAN TRANSPORTATION AUTHORITY [NAME OF LICENSEE]

for and on behalf of itself and the following affiliates: New York City Transit Authority, Long Island Rail Road Company, Metro-North Commuter Railroad Company, Triborough Bridge and Tunnel Authority, and Metropolitan Suburban Bus Authority

By \_\_\_\_\_

Title:

By \_\_\_\_\_

Title:





## **APPENDIX D – IMPLEMENTATION SCOPE OF WORK**

The following scope of work shall apply to work to be performed at the Host Sites.

### **1. Site Survey**

The Contractor shall work with NYPA project managers and MTA representatives to identify potential Sites for the installation of solar PV systems. The Contractor shall prepare a Site Survey specifying a solar PV system for the Site for review and approval by NYPA and the MTA. The Site Survey is to include, but not be limited to:

- 1.1** A description of the proposed PV system, including specifications on the PV panels, mounting systems or structures, inverters, and disconnect switches
- 1.2** General layout schematics showing how the PV system will be arranged at the Site
- 1.3** The estimated monthly PV system capacity and energy generation, and the affect of this generation on the Site electrical load
- 1.4** The proposed point of electrical interconnection
- 1.5** A preliminary structural review of proposed system
- 1.6** A schedule outlining the installation phases, to include start and stop dates as well as days of week and hours of day scheduling.

Upon NYPA and MTA approval of the Site Survey, the Contractor shall establish an agreement with the MTA authorizing the installation and operation of the PV system. Once the agreement has been executed, the Contractor shall install the system according to the PV System Installation Scope of Work and Additional Requirements as described in Sections 2 and 3 below.

### **2. Installation Scope of Work**

All solar PV systems installed under the SPPA contract shall operate in parallel with the local utility grid. Net metering shall be employed as needed and allowed by the local utility. Current New York State operating guidelines for grid parallel and net metered PV systems can be found at: <http://www.dps.state.ny.us/distgen.htm>. Additional requirements are to be determined through consultation with the local utility.

A data monitoring and acquisition system shall be installed at each site to allow for system performance monitoring relative to site solar gain and ambient conditions.

Contractor shall be responsible for providing site specific turn-key PV systems in accordance with this RFP and shall work closely with the designated NYPA Project Manager. This work shall include, but not be limited to:

**2.1 Draft Design:** A written design specification of each PV system shall provide a detailed description of the system. Note: Combiner boxes must be UL Listed, not just UL Recognized. At a minimum, the design will contain:

**2.1.1 Overview:** A written overview describing the system design. The overview shall also contain data sheets for the following: PV panels, inverters, temperature sensor, irradiance sensor, DAS computer, DAS software, AC and DC disconnect switches, lightning arrestors, surge suppressors, combiner boxes, circuit breakers, electrical panels, mounting systems/platforms and other systems components as appropriate.

**2.1.2 One-line Schematic:** A basic system layout showing how the system components are connected. The Point of Connection shall be labeled, "Complies with NEC 690-64(B)."

**2.1.3 Three-line Diagram:** A three-line electric diagram of the system. Details listed on the three line diagram shall show:

**2.1.3.1** Make, model, AC kW rating, UL1741 listing of inverter(s).

**2.1.3.2** Make, model, DC kW rating, UL1703 listing of solar panels.

**2.1.3.3** Make, model and voltage and current interrupt rating of all AC and DC disconnect switches.

**2.1.3.4** Make and model of all lightning arrestors and surge suppression equipment.

**2.1.3.5** Make, model, UL1741 listing of combiner boxes.

**2.1.3.6** Make, model, manufacturer part number and rating of combiner box fuses, as necessary.

**2.1.3.7** Make, model and rating of all circuit breakers and electrical panels.

**2.1.3.8** Size, insulation rating, and temperature rating of system wiring and nominal voltage present on each line.

**2.1.3.9** Complete electrical circuit back to customer's utility meter. All customer electrical panels related to the PV system shall be

shown. Such panels shall be labeled with the make, model, bus rating and customer designation. The main circuit breaker shall also be labeled with the make and rating (if applicable).

**2.1.3.10** The Point of Connection shall be labeled, "Complies with NEC 690-64(B)."

**2.1.4 Ampacity Report:** A written report in letter format detailing the calculations used to determine the wire gauge(s) and circuit breakers selected for the PV system.

**2.1.5 Conductor Fill Report:** A written report in letter format demonstrating compliance with NEC conductor fill requirements for all conduit runs. May be combined with the Ampacity Report.

**2.1.6 Dimensional Drawing:** A dimensional drawing of the layout of the PV system on the roof or grounds. The drawing shall include:

**2.1.6.1** Any supporting structures required for PV system mounting

**2.1.6.2** Size and type of conduit.

**2.1.6.3** Placement of the temperature and irradiance sensors.

**2.1.6.4** Major roof features such as skylights, vents, fans, stairs, etc.

**2.1.6.5** System weight, type of ballast and weight, and overall pressure of the system on the roof. **Ballast Drawing:** A detail drawing of the ballast configuration and mounting details for the PV panels.

**2.1.7 Wind Loading Report:** A written report describing the systems required for the PV system to meet wind loading requirements. The report should list the assumptions made and show the calculations used to determine the necessary systems.

**2.1.8 Roof Structural Report:** A written report describing the structural ability of the roof or provided structure to support the weight and wind loading of the solar PV system.

**2.1.9 Utility Interconnection Inspection Checklist:** Contractor shall generate a checklist for use during the utility inspection of the installed PV system.

**2.2 Photo Journal:** Upon acceptance of the Draft Design, Contractor shall generate a journal of photographs which detail of the planned conduit run between the solar panels and the Point of Connection. The journal shall also document the planned conduit run between the PV system and the AC

disconnect switch. The path of the conduits shall be highlighted in the photos. The journal will be used identify sample sites for lead and asbestos testing.

- 2.3 Final Design:** Upon acceptance of the Draft Design by NYPA, Contractor will cause to be delivered to NYPA originals of Articles 2.2.2 – 2.2.10 bearing the stamp of a licensed New York State Professional Engineer ("PE").
- 2.4 Lead and Asbestos Testing:** The Contractor shall cause lead and asbestos testing to occur. The Authority shall formally authorize continuation of the project upon verification that no lead or asbestos is found in path defined in the Photo Journal.
- 2.5 Permits and Interconnection Filing and Approvals:** Contractor shall be responsible for the filing and approval for all permits and applications, including, but not limited to: construction, building, electrical, and grid-parallel applications. Copies of all permits and approvals obtained by Contractor will be submitted to NYPA as they are received.
- 2.6 Roof warranty verification and validation:** Prior to installing any roof mounted PV systems, the Contractor is to ensure that existing roof waterproofing warranties remain valid after the installation of the PV system or shall provide for roof waterproofing warranties. For roofs with a valid manufacturer/installer warranty, Contractor shall submit to NYPA written correspondence from warrantor confirming installation of the PV system, as designed, shall not invalidate the roof warranty. For roofs without a valid warranty, Contractor shall formally notify NYPA that the roof has no warranty.
- 2.7 Delivery:** Contractor shall deliver all system components to the project site. Contractor shall be responsible for making arrangements with each site for storage of any parts or equipment. Contractor shall submit written confirmation of delivery to NYPA.
- 2.8 Installation and Inspection:** Contractor shall install PV systems and the DAS in compliance with all applicable codes and standards as specified in Section 3 and shall complete an inspection by the local authority having jurisdiction.
- 2.8.1** Contractor shall arrange for an electrical inspection by the local authority having jurisdiction once Installation is complete.
- 2.8.2** Contractor shall notify NYPA, in writing, that the Installation and Inspection has been completed and that the PV system is available for grid parallel operation. The Installation and Inspection letter, a copy of

the Certificate of Electrical Inspection and the original PV Installation Checklist (Attachment A) shall accompany the notification.

**2.8.3**The system shall be left off and work will stop at this stage until permission to continue is issued by the Authority.

**2.9 Utility Inspection and Start-up:** Contractor shall coordinate with the local utility to arrange a time for the utility to inspect the system. Contractor shall complete and endorse the Utility Interconnection Inspection Checklist and shall cause it to be endorsed by the local utility.

**2.9.1** NYPA reserves the right to witness the start-up inspection.

**2.9.2** Contractor shall notify NYPA, in writing, that the utility inspection has been successfully completed and such notification shall be accompanied by an original Utility Interconnection Inspection Checklist to NYPA.

**2.9.3** Contractor shall forward any correspondence received from the local utility resulting from the Utility Inspection.

**2.9.4** Contractor should leave the PV system operating in a grid parallel mode to begin collecting data for the Acceptance Report.

**2.9.5** Contractor shall be responsible for addressing any system deficiencies identified by the local utility during the Utility Inspection and noted in any correspondence generated by the local utility.

**2.10 Operation and Maintenance:** Site personnel should be familiar with the basic operation and troubleshooting of the PV system.

**2.10.1 Operations and Maintenance Training Course:** Contractor shall develop and deliver a training course to site-designated personnel immediately following Installation or Inspection and Start-up. This course shall cover the one-line schematic and three-line diagram as well as all major system components on the drawings, including the DAS.

**Operations and Maintenance Manual:** Contractor shall supply three copies of a site-specific O&M manual to each site. All materials necessary for the training course shall be included in the manual. At a minimum, the O&M manual shall contain:

**2.10.1.1** A basic written system description.

**2.10.1.2** One-line schematic.

**2.10.1.3** Three-line diagram.

**2.10.1.4** Start-up and shut down procedures incorporating site-specific photos of all components involved (AC and DC disconnects, inverters, circuit breakers, etc.).

**2.10.1.5** Preventative Maintenance (PM) Checklists for weekly / quarterly / annual PMs, as required.

**2.11 As-built drawings:** Deviations from the Final Design to accommodate site conditions shall be documented in a final set of as-built drawings. Any as-built drawings shall bear the stamp of a PE and shall be submitted to NYPA no later than the delivery of the Acceptance Report. As built-drawings are only required to document deviations from Final Design documents.

**2.12 Acceptance Report:** The PV system shall operate for one month at a 100% performance index without an unscheduled maintenance incident. A written report in letter format summarizing the first month's data and performance shall be submitted to NYPA for review and approval as soon as is practicable. The report will identify the expected output of the system and compare it results from actual data collected by the DAS.

**2.12.1 Acceptance:** NYPA will formally notify Contractor that it has reviewed the Acceptance Report and is substantially in agreement with its content.

### **3. Additional Requirements**

**3.1** Metering and communication equipment shall be installed and operated according to the terms of the SPPA

**3.2** Contractor shall be responsible for the installation of firestopping at all internal and external penetrations.

**3.3** Contractor shall be responsible for working with the roofing manufacturer and/or installer to ensure that any existing roof warranty remain valid after the installation of the PV system.

**3.4** Contractor shall utilize Delta Lightning's model LA60x and LA60xDC lightning

arrestors, or equivalent, to protect the inverters from lightning strikes on either the AC or DC side of the inverter.

- 3.5** Contractor shall utilize Delta Lightning's model CA302R or CA603R surge suppressor, or equivalent, to protect the inverters from electrical surges on the AC side of the inverter.

**3.6 Applicable Codes and Standards**

All design and installation work shall comply with relevant provisions of the following codes and standards:

- National Electrical Code
- ASCE Standard No. 7-05, Minimum Design Loads for Buildings and Other Structures
- Work at all New York State public school sites shall conform to:
  - 8 NYCRR 155.5, Uniform Safety Standards for School Construction and Maintenance Projects.
  - New York State Uniform Fire Prevention and Building Code
  - New York State Energy Conservation Construction Code
- All PV panels, inverters, combiner boxes and electrical components shall be listed or recognized, as applicable, by an OSHA-certified Nationally Recognized Testing Laboratory, <http://www.osha.gov/dts/otpc/nrtl/index.html>, (i.e. CSA, UL, etc.).
- Work requiring use of Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms shall comply with fall arrest provisions of 29 CFR 1910, Occupational Safety and Health Standards and 29 CFR 1926, Safety and Health Regulations for Construction.
- All other applicable New York City, New York State and federal and local government codes.

**3.7 PV Array Requirements**

**3.7.1** PV panels shall be UL1703 listed.

**3.7.2** The array shall include all supplementary AC and DC circuits including wires, conduit, combiner boxes and disconnect switches. All roof mounted electrical components, including conduit, shall be watertight and installed so as to allow for seasonal thermal expansion without structural stress or failure. Appropriate expansion fittings shall be used on conduit runs to meet NEC 347-9. One example for PVC expansion fittings would be Carlon's Expansion Joints for PVC Rigid Nonmetallic Conduit ([http://www.carlon.com/Installation\\_Training/IT-ISEXPJT.pdf](http://www.carlon.com/Installation_Training/IT-ISEXPJT.pdf)).

**3.7.3** PV arrays shall be mounted such that all panels, support structures

and related electrical components are held in place without any penetrations to the roof membrane and waterproofing system unless specifically approved by NYPA and the Site. Adjacent ballast pans shall be fastened together to create monolithic structures as possible.

**3.7.4** The array shall remain stable without structural failure when subjected to wind loads as defined in 19 NYCRR 1221, Building Code of New York State, Section 1609, Wind Loads, or as required by local building code. Per 19 NYCRR 1221 Section 1609, the wind loads shall be determined in accordance with Chapter 6 of ASCE Standard No. 7-05, Minimum Design Loads for Buildings and Other Structures.

**3.7.5** All material used in the PV array must be in new, unused condition and must be selected to provide corrosion resistance and mutual compatibility.

**3.7.6** The PV array shall be mounted so as not to affect roof drainage.

### **3.8 Inverter and Wiring Requirements**

**3.8.1** Inverters and combiner boxes shall be listed to UL1741.

**3.8.2** The Inverters shall be capable of completely automatic, unattended operation, including wake-up, synchronization, and disconnection.

**3.8.3** The maximum audible noise of the inverter shall be 50 dB at 2 feet.

### **3.9 System Monitoring**

Collection of system data is necessary to track the system's performance over time, as well as provided necessary data that can be used for educational purposes.

#### **3.9.1 DAS Inputs**

**3.9.1.1** Module temperature sensor

**3.9.1.2** Irradiance sensor

**3.9.1.3** AC power OR AC voltage and current OR both AC power AND AC voltage and current

**3.9.2 DAS:** The data acquisition system shall:

**3.9.2.1** Record the data supplied to the DAS by the equipment in Article 3.5.1.

**3.9.2.2** Track cumulative system AC energy generation, run time and system error messages.

**3.9.2.3** Be intuitive to use and have a user-friendly interface capable

of displaying the information from Articles 3.5.1 and 3.5.2.2 in real time.

- 3.9.2.4** Be capable of charting basic data such as power over time and kWh generated during a defined time interval.
- 3.9.2.5** Be capable of downloading all recorded data through a modem and to external storage devices.
- 3.9.2.6** Be installed on a portable, networkable laptop computer that meets or exceeds the software manufacturer's minimum requirements. The laptop shall be located in a secured area such as a locked office or must be mounted in a lockable wall-mount cabinet with a window that allows the screen to be viewed while the door is closed.

## **PV INSTALLATION CHECKLIST**

# **ATTACHMENT A**

## **PV INSTALLATION CHECKLIST<sup>1</sup>**

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<sup>1</sup> This document a modification of the Photovoltaic Electrical Power Systems Inspector/Installer Checklist created by John Wiles, Southwest Technology Development Institute, New Mexico State University, June 2006

## PV INSTALLATION CHECKLIST

The following checklist is an outline of the general requirements found in the *2005 National Electrical Code ("NEC")* — Article 690 for Photovoltaic ("PV") Power Systems installations.

The checklist is only a guide and applies to any component used or installed in a PV system other than a listed, factory-assembled component.

The local authority having jurisdiction ("AHJ") or inspector has the final say on what is or is not acceptable. Local codes may modify the requirements of the *NEC*.

This list should be used in conjunction with Article 690 and other applicable articles of the *NEC* and includes inspection requirements for utility-interactive PV systems. Where Article 690 differs from other articles of the *NEC*, Article 690 takes precedence. [690.3]

References in brackets [ ] are to the 2005 *NEC* and other relevant documents.

# PV INSTALLATION CHECKLIST

## INSTALLATION SUMMARY

	Project:
	Address:
Date	Date Contractor received permission from the Authority to continue construction after completion of Lead and Asbestos Testing.
Date	Date Installation complete and the man-hours required to perform the installation.

## PV ARRAY

Initial	Date	PV panels listed to UL Standard 1703? [110.3]
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### Mechanical Attachment

Initial	Date	Modules attached to the mounting structure according to the manufacturer's instructions?
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### Grounding

Initial	Date	Each panel grounded using the supplied hardware, the grounding point identified on the panel and the manufacturer's instructions?
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Note: Bolting the panel to a "grounded" structure usually will not meet *NEC* requirements.

Initial	Date	Properly sized equipment-grounding conductors routed with the circuit conductors? [690.45]
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### Conductors

Initial	Date	Listed for the application and the environment? Conductor type? _____
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Initial	Date	If exposed: USE-2, UF (usually inadequate at 60°C), or SE, 90°C, wet-rated and sunlight-resistant. [690.31 (B)] If in conduit: RHW -2, THWN-2, or XHHW-2 90°C, wet-rated conductors. [310.15]
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Initial	Date	Conductor insulation rated at 90°C? [UL-1 703] Allows operation at 70°C+ near panels and in conduit exposed to sunlight (add 17 -20°C to ambient temperature)
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Initial	Date	Temperature-derated ampacity calculations based on 156% of short-circuit current ( $I_{sc}$ ), and the derated ampacity greater than 156% $I_{sc}$ rating of overcurrent device? [690.8,9] Note: Suggest temperature derating factors of 65°C in installations where the backs of the panel receive cooling air (6" or more from surface) and 75°C where no cooling air can get to the backs of the panels.
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Initial	Date	Strain reliefs/cable clamps or conduit used on all cables and cords? [300.4, 400.10]
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# PV INSTALLATION CHECKLIST

## OVERCURRENT PROTECTION

Initial	Date	Overcurrent devices in the DC circuits listed for DC operation? If device not marked DC, verify DC listing with manufacturer and submit data sheet to the Authority. Note: Auto, marine, and telecom devices not acceptable. Rated at $1.25 \times 1.25 = 1.56$ times short-circuit current from panels? [UL-1 703, 690.8, panel instructions] Note: Both 125% factors are now in the <i>NEC</i> . Supplementary listed devices are allowed in PV source circuits only, but branch-circuit rated devices preferred. [690.9(C)] Each panel or series string of panels has an overcurrent device protecting the panel? [UL-1 703/NEC 110.3(B)] Note: Frequently, installers ignore this requirement, which is marked on the back of the panels. Listed PV combiner boxes meeting this requirement are available. SMA Sunny Boy and some other "string" inverters operating at high voltages may not require DC fuses with two strings of panels or less.
Initial	Date	Located in a position in the circuit to protect the panel conductors from being backfed by currents from parallel panel circuits or from the charge controller? [690- 9(A) FPN]
Initial	Date	Is the smallest conductor used to wire panels protected? Note: Sources of overcurrent are parallel-connected panels and AC backfed through inverters. [690-9(A)]
Initial	Date	User-accessible fuses in "touch-safe" holders or capable of being changed without touching live contacts? [690.16]

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## ELECTRICAL CONNECTIONS

Initial	Date	Pressure terminals tightened to the recommended torque specification?
Initial	Date	Crimp-on terminals listed and installed with listed crimping tools by the same manufacturer?
Initial	Date	Twist-on wire connectors listed for the environment (i.e. dry, damp, wet, or direct burial) and installed per the manufacturer's instructions?
Initial	Date	Pressure lugs or other terminals listed for the environment? (i.e. inside, outside, wet, direct burial)
Initial	Date	Combiner boxes <i>Listed</i> (not Recognized), by an OSHA-recognized Nationally Recognized Testing Laboratory ("NRTL") (e.g. UL, CSA, etc.)?
Initial	Date	Are terminals containing more than one conductor listed for multiple conductors?
Initial	Date	Are connectors or terminals using flexible, fine-stranded conductors listed for use with such conductors?

# PV INSTALLATION CHECKLIST

## DISCONNECTS

		Disconnects in DC circuits listed for DC operation? <small>Note: Automotive, marine, and telecom devices are not acceptable.</small>
Initial	Date	
		AC disconnect readily accessible and located at first point of penetration of PV conductors?
Initial	Date	
		PV conductors outside structure until reaching first readily accessible disconnect unless in metallic raceway? [690.14, 690.31 (F)]
Initial	Date	
		Disconnects for all current-carrying conductors of PV source? [690.13]
Initial	Date	
		Disconnects for equipment? [690.17]
		Grounded conductors <i>not</i> fused or switched?
Initial	Date	
		<small>Note: Bolted disconnects OK. Note: Listed PV Centers by Xantrex, Outback, and others for 12, 24, and 48-volt systems contain charge controllers, disconnects, and overcurrent protection for entire DC system with possible exception of source circuit or panel protective fuses.</small>

## INVERTERS

		Serial Number(s) and Date(s) of manufacture (List all units here if more than one.)
		SN _____ Mfg. Date _____
Initial	Date	
		SN _____ Mfg. Date _____
		SN _____ Mfg. Date _____
		SN _____ Mfg. Date _____
		SN _____ Mfg. Date _____
		SN _____ Mfg. Date _____
		<i>For inverters manufactured <b>after</b> May 7, 2007:</i>
Initial	Date	
		Inverter listed to UL Standard 1741 with IEEE1547 and identified for use in interactive photovoltaic power systems? [690.4(D), 690.60] <small>Note: Inverters listed to telecommunications and other standards do not meet NEC requirements.</small>
		<i>For inverters manufactured <b>before</b> May 7, 2007:</i>
Initial	Date	
		Inverter listed to UL Standard 1741 and identified for use in interactive photovoltaic power systems? [690.4(D), 690.60] <small>Note: Inverters listed to telecommunications and other standards do not meet NEC requirements.</small>
Initial	Date	
		Connected to dedicated branch circuit with back-fed overcurrent protection? [690.64]
Initial	Date	
		NRTL Listed DC and AC disconnects and overcurrent protection? [690.15,17]
Initial	Date	
		Total rating of overcurrent devices <u>supplying</u> power to AC load center (main breaker plus backfed PV breaker) less than load-center rating (120% of rating in residences)? [690.64(B) (2)]

# PV INSTALLATION CHECKLIST

## GROUNDING

Initial	Date	Only one bonding conductor (grounded conductor to ground) for DC circuits? [250] <small>Note: DC bonds may be located inside inverters or in ground-fault protection devices.</small>
Initial	Date	Only one bonding conductor for AC circuits (neutral to ground) for system grounding? [250]
Initial	Date	AC and DC grounding electrode conductors connected properly? [690.41 ,47] <small>Note: They may be connected to the same grounding electrode system (ground rod). Separate electrodes, if used, must be bonded together.</small>
Initial	Date	Equipment grounding conductors properly sized (even on ungrounded, low -voltage systems)? [690.43]
Initial	Date	Bonding fittings used with metal conduits when DC system voltage is more than 250V DC? [250.97]

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## CONDUCTORS (General)

Initial	Date	Standard building-wire cables and wiring methods used? [300.1(A)]
Initial	Date	Wet-rated conductors used in conduits in exposed locations? [100 Definition of Location, Wet]
Initial	Date	DC color codes correct? <small>Note: They are the same as AC color codes—grounded conductors are white and equipment-grounding conductors are green, green/yellow, or bare. [200.6(A)]</small>

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## INSPECTION

Initial	Date	Electrical inspection complete and Certificate of Electrical Inspection issued by the local AHJ?
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