ATTACHMENT F: SAMPLE STANDARD PERFORMANCE AGREEMENT
PV Projects

NY-Sun Competitive PV Program (PON 2589)

STANDARD PERFORMANCE AGREEMENT FOR PV

BETWEEN

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[CONTRACTOR]

Agreement #

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AGREEMENT

This Standard Performance Agreement (hereinafter referred to as the "Agreement"), dated and effective as of the ___ day of _____, 201_ ("Effective Date") by and between the New York State Energy Research and Development Authority (hereinafter referred to as "NYSERDA") with its principal office located at 17 Columbia Circle, Albany, New York, 12203-6399, and _____ [Contractor], (hereinafter "Contractor") with offices located at _____. NYSERDA and the Contractor may be individually referred herein as a "Party" and collectively as the "Parties."

In consideration of the mutual promises and agreements herein expressed, NYSERDA and the Contractor hereby agree as follows:

ARTICLE 1: DEFINITIONS

§1.1. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

Agreement: This Standard Performance Agreement, including Exhibits A (Budget), B (Standard Terms and Conditions), C (Prompt Payment Policy Statement), D (PV Project Site Installation Information Form), and E (Metrics Reporting Guide), all of which are incorporated herein and made part hereof.

Annual Performance Report: A report submitted annually by Contractor to NYSERDA for a period of three (3) years, using information extracted from NYSERDA's data management website, containing the monthly electric energy production data (in kWh) for the 12 month payment period (Site Actual Annual Energy Production).

Assigned Capacity Factor: A value, predetermined by NYSERDA, of 11% (.11).

Award Notification. A written notification by NYSERDA to Contractor of an award under PON 2589; such notification may be delivered electronically.

Budget: The Budget set forth as Exhibit A of this Agreement.

Capacity: The manufacturer's nameplate rating or the total DC power rating in kilowatts (kW) of the PV panels installed.

Contractor: The entity identified in paragraph one of page one of this Agreement.

Customer: The owner or tenant and electric customer at a Project Site and who pays the RPS Surcharge on behalf of the Project Site.

Data Agent: NYSERDA's data integration contractor who will manage and present the energy production data on a website.

Effective Date: The date appearing in the first paragraph of this Agreement.

Incentive Bid: The requested and accepted incentive payment rate in $/kWh and included in the Budget (Exhibit A).

Performance Period: The period for which performance payments will be made for the Project Site installed. The Performance Period for the Project Site is three (3) consecutive years beginning on the first of the month following the interconnection of the electric generation equipment and production of electric energy in accordance with the requirements of this program.

Project Site: Where the PV system is located, where the electricity from the PV System is used, and where the utility meter is located.

Project Site Incentive: The Project Site Incentive shall equal the Incentive Bid multiplied by the Site Estimated Annual Energy Production multiplied by three (3) as set forth in the Budget (Exhibit A).

Project Site Size Limitation: Projects shall be sized such that the Site Estimated Annual Energy Production will not exceed 110% of the site's historical annual net grid supplied consumption (including any eligible satellite meters).

Renewable Portfolio Standard (RPS) Program: The New York State Renewable Portfolio Standard (RPS) Program, established by the New York State Public Service Commission to increase the proportion of renewable electricity used by New York consumers to at least 30% by 2015.

RPS Attributes: Orders issued by the Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in New York State that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSERDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program, regardless of the percentage of the project capacity included on the Bid Application Form, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS. No party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program to any party or system outside of New York State.

RPS Surcharge: A delivery surcharge collected by the State's investor-owned utilities (National Grid, NYSEG, Rochester Gas and Electric, Orange and Rockland, Central Hudson Gas and Electric, and Consolidated Edison), and paid to NYSERDA in accordance with orders issued by the New York State Public Service Commission.

Satellite Meter: Additional meter designated by the Project Site utility account, in accordance with Public Service Law § 66-j.

Site Actual Annual Energy Production: The actual metered energy production in kWh of the specific Project Site over the period of one year.

Site Estimated Annual Energy Production: Shall equal the Project Site Capacity multiplied by the Assigned Capacity Factor (11%) multiplied by x 8760 hours/year.

Strategic Locations: The electric utilities in the Zone Groups have identified regions within their service territories where installation of new on-site electric generating systems will provide benefits to the electric distribution system.

Term of Agreement: The term of this Agreement as defined in Section 2.2 hereof.

Total Contract Estimated Energy Production: Shall equal the Capacity x Assigned Capacity Factor (11%) x 8760 hours/year x 3 years.

Zone Group: The grouping of New York Independent System Operator (NYISO) designated zones (A-F) or (G&H) or (I&J) as applicable to this Agreement.

ARTICLE 2: GENERAL TERMS AND CONDITIONS

§2.1. Term of Agreement. The term of this Agreement shall begin on the Effective Date and continue until approval of and payment based on the third Annual Performance Report for the Project Site installed under this Agreement, unless extended or terminated under the terms hereof.

§2.2. Substitution of Project Sites. A request by the Contractor to substitute a PV Project Site, within the same Zone Group, will be entertained and, in NYSERDA's discretion, may be granted if such request is accompanied by a completed Project Site Package and the request is received by NYSERDA within the first two (2) months following Award Notification.

§2.3. Extensions of Time. Deadlines for submittal of documentation to NYSERDA, including those described under Articles 3 and 4 hereto, may be extended for good cause at NYSERDA's discretion. As used herein, "good cause" means an unanticipated circumstance or event which, despite the due diligence of the Contractor, renders compliance a given deadline impracticable. A request for an extension must be submitted in writing to NYSERDA as soon as the Contractor becomes reasonably aware of any such circumstance(s) or event(s), but in any case no later than the applicable deadline date. Extensions may be granted or denied at NYSERDA's sole discretion. Any such extension shall be communicated to Contractor in writing by NYSERDA's Contract Administrator. NYSERDA may terminate this Agreement upon the failure of the Contractor to conform to deadlines or these requirements.

§2.4. Management Responsibilities. [Contractor Representative] shall be the Project Manager. The Project Manager shall be responsible for the management and coordination of all activities associated with the Project Site identified on the PV Project Site Installation Information Form (Exhibit D). Regardless of subcontracting arrangements, the Contractor shall be solely responsible for the timely provision of deliverables and completion of tasks outlined in this Agreement, including, but not limited to:

A. Coordinate the work of the Contractor's employees and those of Subcontractors and equipment vendors that are undertaking tasks described in this Agreement;
B. Ensuring control over the Budget (Exhibit A);
C. Providing all program deliverables to NYSERDA as specified in this Agreement; and
D. Ensuring that the Project Site is implemented in accordance with the Agreement.

§2.5. Manner of Performance. The Contractor shall perform its responsibilities under this Agreement in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform all responsibilities in accordance with current professional standards and with the diligence and skill expected for the performance of work of the type described in this Agreement. The Contractor shall furnish such personnel and shall procure such materials, machinery,

supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform its responsibilities in accordance with this Agreement. The Project Site must conform to the eligibility requirements imposed by the RPS Program with regard to the Customer-Sited Tier.

§2.6. Equipment and Components. The equipment and all associated components installed through this program must be new and all PV modules must be certified as meeting all applicable standards of the Institute of Electrical and Electronics Engineers (IEEE) and Underwriter's Laboratory (UL) 1703. All inverters must be listed on the New York State Public Service Commission certified equipment listing (http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/dcf68efca391ad6085257687006f396b/$FILE/SIRDevices.pdf). For each Project Site, the Contractor agrees to provide, install, and maintain an internet enabled electric meter that displays instantaneous AC power and cumulative total AC energy production and, at a minimum, can record cumulative total AC energy production of the PV system on an hourly basis, store the hourly readings for at least 7 days, and can transmit recorded readings once per day to a NYSERDA designated Data Agent via e-mail, FTP, HTTP or Modbus TCP/IP. The meter must meet ANSI C12.20, be Revenue grade with a +/-0.2% accuracy, and be properly calibrated. The meter must also have battery backup to prevent the loss of data during power outages.

For each Project Site, the Contractor agrees to provide, and to maintain, an active internet connection to the meter throughout the Performance Period to support daily data transmissions. Data collected from the meter will be made available to the public at http://chp.nyserda.org or other similar website specified by NYSERDA, and will be used by NYSERDA to verify the Site Actual Annual Energy Production which will determine the amount of each annual performance payment.

§2.7. Site Inspection. The Contractor agrees to provide to NYSERDA, NYSERDA's technical contractor(s) and/or Data Agent, throughout the Term of Agreement, access to the Project Site(s) facility, equipment, data (including metering and energy management system data), and personnel as necessary to facilitate quality assurance of the PV system installation. NYSERDA or its technical contractor(s) may conduct a site inspection at the Project Site at any time. NYSERDA, its technical contractor, or Data Agent may choose to visit the Project Site to verify that the information provided in any of the required documentation is accurate. Should NYSERDA decide to inspect the Project Site, NYSERDA, its technical contractor, or Data Agent may or may not contact the Contractor to schedule the inspection; inspections may occur without advance notice to the Contractor. If the inspection reveals activities different from that represented in any of the required documentation, NYSERDA may refuse to make any payment. Contractor hereby agrees that NYSERDA may independently communicate with any Customer, without prior notice to Contractor, with respect to the Project Site.

§2.8 Energy Assessment. The Contractor will be required to conduct an energy efficiency assessment for the Project Site using the ASHRAE level 1 walk-through energy audit to determine cost-effective energy efficiency measures related to electricity use. If the site is located in zone J the Contractor is required to provide NYSERDA with a copy of the buildings energy score as required under PlanNYC. Building owners are encouraged to but will not be required to implement energy efficiency measures thus identified. Furthermore, the Contractor must inform building owners that various techniques exist for conducting more-advanced energy benchmarking, such as the USDOE/USEPA Energy Star Portfolio Manager Benchmarking Tool (http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager), or other equivalent tools; at the building owner's request, the Contractor will help them enter utility bill information into the Tool in order to produce an Energy Use Index (EUI) and, where applicable, an Energy Star score. Upon request from the Contractor, NYSERDA will provide the Contractor with access to informational brochures on NYSERDA and utility energy efficiency programs. The Contractor is encouraged to provide these

brochures to the building owners for information. Building owners will not be required to perform the more-advanced benchmarking or implement energy efficiency measures thus identified.

ARTICLE 3: REQUIRED DELIVERABLES

§3.1. Notification. The Contractor shall immediately notify NYSERDA's Project Manager of any significant problems that develop during the Term of Agreement. The Contractor shall periodically provide information to assist NYSERDA's Project Manager in documenting Project Site impacts, relative to the Project Site's energy, environmental, and economic goals.

§3.2. Project Agreements. Contractor shall provide to NYSERDA's Project Manager, within sixty (60) days of notification in writing by NYSERDA of an award, a copy of (1) a fully executed agreement demonstrating a binding financial commitment to install the project at the Project Site; and (2) a fully executed agreement between the Contractor and the Customer including the terms set forth in Attachment J to PON 2589.

§3.3. Project Site Milestone Status. Contractor shall promptly comply with a request by NYSERDA for information regarding progress of the project toward installation and completion, which may include but not be limited to information of the status of project financing, customer contracting, acquisition of permits and/or approvals, and interconnection.

§3.4. Annual Metrics Reports. On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the Project Site. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). The Contractor shall provide metrics in accordance with Exhibit G, Metrics Reporting Guide.

§3.5 Net Metering and Interconnection. Contractor's are encouraged to investigate, and if eligible, avail themselves of any net metering opportunities they may qualify for, including remote net metering if applicable. To determine if the Project Site qualifies for net metering or remote net metering, please refer to the appropriate utility tariff using the link below.

https://www2.dps.ny.gov/ETS/search/searchShortcutEffective.cfm?serviceType=ELECTRIC

Contractor should be aware that by pursuing interconnection with the utility, they may incur utility fees and/or costs to upgrade the local utility infrastructure. Depending upon the size, nature and location of the project, these fees may be substantial and if a utility upgrade is required, it could result in significant time delays. Contractors are strongly encouraged to contact their local utility representative as soon as possible.

The system must be sized such that the Site Estimated Annual Energy Production will not exceed 110% of the site's historical annual net grid supplied consumption (including any eligible satellite meters)

ARTICLE 4: PAYMENTS

§4.1. Payments. Payments will be provided to the Contractor to install new complete grid-connected (electrically interconnected on the customer side of the utility meter) photovoltaic (PV) systems in New York State NYISO Zone Group _____ [specify either (A-F) or (G&H) or (I&J)] conforming to the requirements of this Agreement, in accordance with § 3.4. The Contractor shall install ____ kW at the

Project Site as identified at Exhibit D (PV Project Site Installation Information). Total funding, regardless of the final system capacity, will not exceed $_____ [Budget]. Funding will be provided when due, as a combination of two up-front payments and three performance payments. Payments for a Project Site(s) in Strategic Locations will be paid at 115% of the Incentive Bid. NYSERDA shall make payments to the Contractor in accordance with the terms of this Agreement and subject to its Prompt Payment Policy Statement, which is attached hereto as Exhibit C.

§4.2. Invoicing. Payments may be requested by the Contractor by submitting an invoice to NYSERDA. Invoices must be accompanied by the required documentation listed below. No invoices will be accepted nor paid if received more than 90 days after the end of the Performance Period. **PV systems installed prior to issuance of this agreement by NYSERDA are not eligible for funding.**

§4.3. First Up-Front Payment. Upon invoicing, the first up-front payment for a Project Site will be in the amount of $_____ and will be paid upon NYSERDA's receipt of documentation sufficiently demonstrating that all major equipment for the Project Site has been procured and delivered to the Project Site, all necessary permits and approvals have been acquired, and initial approval from the utility has been received. The payment will be 15% of the Project Site Incentive. Contractor's invoice requesting the first up-front payment shall be accompanied by:

A. Proof of delivery of equipment and components to the Project Site, including the type and number of PV modules; inverter(s); meter.
B. Copy of permits required for installation.
C. Initial approval from the Utility

§4.4. Second Up-Front Payment. Upon invoicing, the second up-front payment will be in the amount of $_____ and will be paid upon NYSERDA's receipt of proof of (1) local electrical inspection, (2) interconnection via a letter or email from the local distribution utility, and (3) demonstration of capability of uploading the required data to NYSERDA's CHP Data Integration Website. Inspection by NYSERDA or NYSERDA's agent may also be required prior to payment. This payment will be 15% of the Project Site Incentive.

§4.5. Performance Payments. Performance payments will be paid at the end of each of the first three (3) full years of operation. For each year of the three year Performance Period, NYSERDA shall pay a performance payment equal to 70% of the Incentive Bid ($/kWh) multiplied by the Site Actual Annual Energy Production (kWh) for such year as verified by the Annual Performance Report. Payments under this Agreement shall not in the aggregate exceed the Project Site Incentive or balance of funds remaining for the Project Site.

ARTICLE 5: FORCE MAJEURE

§5.1. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting there from, fires, floods, storms, explosions, accidents, riots, or strikes or the delay or failure to perform by any subcontractor by reason of any cause or circumstance beyond the reasonable control of such subcontractor. Failure by Contractor to obtain or secure any permit or approval or delay in obtaining any permit or approval of any sort with regard to Contractor's performance under the Agreement shall not constitute a force majeure event.

ARTICLE 6: TERMINATION

§6.1. This Agreement shall remain in effect for the term defined in Section 2.1 hereof, unless there is an event of default and the Agreement is terminated in accordance with this Article. Events of default include either Party's breach of any provision of this Agreement, including provisions incorporated by reference, and including, but not limited to, the following:

A. failure of the Contractor to perform its responsibilities in a timely manner, including, but not limited to, failure to provide the required submittals within the required time frames, including responses to requests for clarification or additional information, or failure to comply with Site Inspection procedures within the time limits and manner set forth herein;
B. failure of the Contractor to provide NYSERDA or its contractors sufficient access to the Project Site for inspection and/or observation of the Contractor's field QA/QC activities;
C. failure of the Contractor to cure any deficiency in a material term or cure any material breach of this Agreement within 30 calendar days after written notice;
D. failure of the Contractor to acquire or maintain any necessary permit, license or failure to maintain Insurance as required under this Agreement;
E. assignment of all or part of the Contractor's obligations required under this Agreement without NYSERDA's prior written permission, except that the Contractor shall not be required to obtain NYSERDA approval to subcontract all or part of the work;
F. submittal by the Contractor of false, misleading or incorrect information; and
G. failure by NYSERDA to make payments due pursuant to the terms of this Agreement to the Contractor within the time limits set forth in this Agreement.

§6.2. Once an event of default occurs, and at any time thereafter so long as the default continues, the non-defaulting Party may, by written notice to the defaulting Party, specify the nature of such default, and declare this Agreement to be in default. The defaulting Party must remedy the default within the time specified in the written notice of default, or 30 calendar days from the date such written notice was given if no time is specified, or within any further period to which the parties may agree. In no event, however, will the defaulting Party be required to remedy a default in less than 30 calendar days from the date the written notice of default was given.

§6.3. Notwithstanding the provisions of this Article, NYSERDA may terminate this Agreement on notice, and without providing an opportunity for cure, should Contractor submit false or misleading information or documentation.

§6.4. If the defaulting party fails to cure its default within the appropriate time period, the non-defaulting party may terminate this Agreement at any time thereafter and, without a waiver of any other remedies which exist in law or equity, exercise at its election, any other rights or remedies it may have under this Agreement, at law or in equity, or institute other proceedings including but not limited to bringing an action or actions from time to time for specific performance, for the recovery of amounts due and unpaid, and for damages.

ARTICLE 7: RPS ATTRIBUTES

§7.1. Orders issued by the Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in New York State that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSERDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS RPS Customer-

Sited Tier Program, regardless of the percentage of the project capacity included on the Bid Application Form, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS. No party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program to any party or system outside of New York State.

ARTICLE 8: INDEMNIFICATION

§8.1. The Contractor shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the Contractor's performance of this Agreement. The Contractor agrees that such obligations under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any insurance coverage required under this Agreement.

ARTICLE 9: INSURANCE.

§9.1. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

A. name or be endorsed to cover NYSERDA and the State of New York as additional insured;
B. provide that such policy may not be canceled or modified until at least thirty (30) calendar days after receipt by NYSERDA of written notice thereof; and
C. be reasonably satisfactory to NYSERDA in all other respects.

§9.2. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

A. Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of $1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, $1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and $1,000,000 in respect of claims arising out of property damage in any one accident or disaster.
B. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

§9.3. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, evidencing the insurance required by this Article. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to the termination date established under Article 2 hereof, the Contractor, not less than thirty (30) calendar days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Contractor shall, upon request, deliver to NYSERDA a certified copy of each policy.

ARTICLE 10: WARRANTIES AND GUARANTEES

§10.1. Each Party warrants and guarantees to the other that:

A. it has all requisite power, authority, licenses, permits and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
B. its execution, delivery and performance of this Agreement have been duly authorized by, or is in accordance with, its organizing instrument, and this Agreement has been duly executed and delivered for it by the signatories authorized, and it constitutes its legal, valid and binding obligation;
C. its execution, delivery and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound or affected; and
D. it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

§10.2. The Contractor also warrants and guarantees that:

A. it is financially and technically qualified to perform the Project Site;
B. it is familiar with and will comply with all general and special federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
C. the design, supervision and workmanship furnished with respect to performance of the Project Site shall be in accordance with sound and currently accepted industry best practices;
D. to the best of its knowledge, neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent, copyright or trademark issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Project Site or any part thereof infringes any patent, copyright, or trademark or otherwise interferes with any other right of any individual, corporation, association or partnership, organization, business or a government or political subdivision thereof, or any governmental agency or instrumentality;
E. it has no actual knowledge that there are existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Project Site or NYSERDA's rights hereunder;
F. it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Project Site;
G. it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is it engaged in any business or transaction or professional activity, nor has it incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement; and
H. it shall exercise reasonable care to achieve commercial standards of fitness for the Customer’s use of the equipment that is installed in connection with the Project Site.

ARTICLE 11: COMPLIANCE WITH CERTAIN LAWS

§11.1. Governing Law/Venue. This Agreement shall be interpreted according to the laws of the State of New York without regard to its conflicts of laws principles. The Contractor, its subcontractors and consultants will comply with all laws, rules, orders, regulations and requirements of federal, state and municipal governments applicable thereto, including provisions set forth in Exhibit C hereto. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in the United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in such courts for purposes of such action.

§11.2. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

§11.3. Other Legal Requirements. The references to particular laws of the State of New York in this Article, and elsewhere in this Agreement are not intended to be exclusive and nothing contained in this Article and the Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

§11.4. Equipment Requirements. All Equipment required for the PV system shall be consistent with the New York State Uniform Fire Prevention and Building Code, or the applicable local, State or Federal codes.

§11.5. State Environmental Quality Review Act (SEQRA). NYSERDA is subject to the provisions of SEQRA, implementing regulations of the New York State Department of Environmental Conservation, and implementing regulations of NYSERDA. Funding will not be released if the Project Site has not complied with SEQRA.

§11.6. Permits and Approvals. The Contractor shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Project Site during the Program Term. Neither the RPS Program nor entry into this Agreement in any way replaces or modifies the necessity or applicability of any permit or approval process by any jurisdiction. NYSERDA's obligations to make payments to Contractor will be conditional on the acquisition of all such permits and approvals. Upon request by NYSERDA Contractor must demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Contractor shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any federal, State or Local entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Project Site, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation.

ARTICLE 12: PUBLICITY

§12.1. The Contractor shall collaborate with NYSERDA's Manager of Communications to prepare any press release and to plan for any news conference concerning the Project Site. In addition, the Contractor shall notify NYSERDA's Manager of Communications regarding any media interview in which the Project Site is/are referred to or discussed.

§12.2. It is recognized that during the course of the Program under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit funding participation in the Program to the **New York Sun Competitive PV Program**, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York."

§12.3. The Contractor shall not use NYSERDA's corporate name, logo, identity, or any affiliation, without NYSERDA's prior written consent.

ARTICLE 13: MISCELLANEOUS

§13.1. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

§13.2. Record Retention. The Contractor and subcontractors shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of five (5) years after the expiration or early termination of this Agreement, accurate records of the Program work which is performed hereunder. NYSERDA or its designated representative shall at reasonable times have access to inspect such records.

§13.3. NYSERDA'S Right to Inspect. NYSERDA, and its designated representatives, may observe and inspect all work performed hereunder in the Customer's facility.

§13.4. No Waiver. The failure of either Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver nor deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

§13.5. Rights and Remedies. No right or remedy conferred upon or reserved to the Parties by this Agreement excludes any other right or remedy provided by law or equity nor restricts the Parties' rights to exercise any other right or remedy.

§13.6. Disputes. Where any matters related to this Agreement are in dispute, the Program Manager and the Contractor contact person, or their designated representatives shall promptly but in any case, within twenty (20) calendar days of written notice by either party to the other, meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and attempt in good faith to resolve the dispute.

§13.7. Assignment. The assignment, transfer, conveyance, or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without NYSERDA's express consent in writing, which shall not be unreasonably withheld, shall be void and of no effect as to NYSERDA.

§13.8. Executory Clause. NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond RPS Surcharge funds actually paid to NYSERDA by third parties which would fund this Agreement.

§13.9. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records pertaining to Contractor's performance under this Agreement, at the office or offices of the Contractor where they are then being kept, maintained and preserved. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Contractor shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Any payment made under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

§13.10. Review and Disclaimer. NYSERDA's execution of this Agreement with the Contractor and any NYSERDA review of the design, construction, operation, or maintenance of the Project Site shall not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of the Project Site. The Contractor shall in no way represent to any third party that NYSERDA's execution of this Agreement or any reviews by NYSERDA, including, but not limited to, NYSERDA's review of the design, construction, operation, or maintenance of the Project Site is a representation by NYSERDA as to the economic or technical feasibility, operational capability, or reliability of the Project Site.

§13.11. Requirement to Pay the RPS. To be eligible for Payment, the Host Customer must be paying the RPS Surcharge on behalf of the Host Site at the time of application submittal to NYSERDA.

§13.12. Relationship of the Parties. It is understood and agreed that the personnel furnished by Contractor to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code. The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

§13.13. No Benefits. Contractor agrees that if the personnel furnished by Contractor are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Contractor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. Contractor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

§13.14. Notification of Claims/Events. Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and

to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

ARTICLE 14: FREEDOM OF INFORMATION

§14.1. Freedom of Information Law. Contractor acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6).

§14.2. Claim of Confidentiality. Information of any tangible form including any document that Contractor wishes to be protected from disclosure to third parties must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

§14.3. Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If NYSERDA receives a request from a third party for information or a document received from Contractor and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations (see http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx?sc_database=web).

ARTICLE 15: NOTICES

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

(i) via certified or registered United States mail, return receipt requested;
(ii) by facsimile transmission;
(iii) by personal delivery;
(iv) by expedited delivery service; or
(v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

NYSERDA
Name: Cheryl L. Earley
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: 518-862-1091
E-Mail Address: cle@nyserda.org
Personal Delivery: Reception desk at the above address

[Contractor Name]
Name:
Title:
Address:
Facsimile Number:
E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

IN WITNESS WHEREOF, the Parties hereto do indicate their acceptance of and agreement to the foregoing by causing their duly authorized representatives to execute this Agreement as of the day, month and year first above written.

[Contractor]	**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**
By _____	By
Name _____	Jeffrey J. Pitkin Treasurer
Title _____	

STATE OF)
) SS.:
COUNTY OF)

On this _____ day of _____, 201_ before me personally came to me known, who, by me duly sworn, did depose and say that deponent resides in _____; that deponent is the_____of _____, the corporation described in and which executed the foregoing instrument; and that (s)he executed the same by the authority of the Board of Directors or By-Laws of said corporation.

Notary Public

EXHIBIT A

BUDGET

Contractor Name:
Agreement Number:

Total (kW)[1]	Incentive Bid[2] ($/kWh)	Budget[3] ($)

Notes:

1) Total aggregated Capacity in kilowatts (kW) of the Project Site(s) to be installed under this Agreement.

2) Incentive Bid is the requested incentive payment rate in $/kWh.

3) The Budget is the maximum amount payable under this Agreement. The Budget is calculated as the Project Site Incentive plus an additional 15% if the Project Site(s) identified by Contractor in an Application Package selected for an award under PON 2589 is in a Strategic Location, not to exceed $3,000,000 per Project Site or $6,000,000 per Applicant.

EXHIBIT B

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds $5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit B, the terms of this Exhibit B shall control.

7. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

8. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

10. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to

penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

11. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

12. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

13. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding $100,000 for the purchase of goods and services:

a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

EXHIBIT C

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability. (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

(3) rendering or providing services to the Authority pursuant to a contract.

(d) "Date of payment" means the date on which the Authority requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(1) "Receipt of an invoice" means:

(i) if the payment is one for which an invoice is required, the later of:

(a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

(b) the date by which, during normal business hours, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the contract requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced the Authority for the portion working, completed or delivered, the Authority will not be in receipt of an invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(k) "Set-off" means the reduction by the Authority of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Authority.

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and

owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.

(b) The Authority shall notify the contractor within 15 calendar days after receipt of an invoice of:

(1) any defects in the delivered goods, property or services;
(2) any defects in the invoice; and
(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If the Authority fails to notify a contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the Authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by the contract or other State or Federal mandate has not been submitted to the Authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the Authority and the date when the Authority has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the contractor is specifically required by the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the Authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of

such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the contract, has completed the inspection, advised the Authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by the Authority after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.

EXHIBIT D

PV PROJECT SITE INSTALLATION INFORMATION FORM

EXHIBIT E

METRICS REPORTING GUIDE