



ANDREW M. CUOMO
Governor

NYSERDA

RICHARD L. KAUFFMAN
Chair

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President and CEO

“Solar For All Facilities”
Request for Proposal (RFP) 3802
\$ 19,800,000

NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.

Round 1 Proposals Due: August 2, 2018 by 3:00 PM Eastern Time*

NYSERDA will provide details and notice of subsequent rounds at a later date.

Community solar enables customers to share in the benefits of solar power even if they live in an apartment or other building that cannot support a rooftop solar system. To help low-income New Yorkers access the benefits of solar power, NYSERDA wishes to secure community solar subscriptions for low-income customers and provide them at no cost to more than 10,000 low-income New Yorkers.

NYSERDA requests proposals for Solar For All Facilities (“Participating Facilities”) to serve residential customers participating in Solar For All (“Participating Subscribers”) with small, no-cost community solar subscriptions. A Participating Facility may comprise all or part of a solar photovoltaic project interconnected under New York’s Community Distributed Generation policy (“CDG Project”), subject to the rules described herein. Each Participating Facility will be managed by a “Facility Sponsor,” which will respond to this RFP, contract with NYSERDA, and be responsible for fulfilling the requirements described in this solicitation. As an optional component to the proposal, Facility Sponsors may also include Community Co-Benefits (“Co-Benefits”) beyond the cost savings that will be delivered to Participating Subscribers.

Proposal Submission: Online submission is preferable. Proposers may submit Word, Excel, or PDF files (file formats include: csv, doc, docx, gif, jpeg, jpg, pdf, png, ppt, pptx, pps, ppsx, tif, txt, xls, xlsx, and zip). Individual files should be 100MB or less in file size. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility. Files should not be scanned. For ease of identification, all electronic files must be named using the proposer’s entity name in the title of the document. NYSERDA will also accept proposals by mail or hand-delivery if online submission is not possible. For detailed instructions on how to submit a proposal (online or paper submission), click the link “[Application Instructions and Portal Training Guide](#) [PDF]” located in the “Current Opportunities” section of NYSERDA’s website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

No communication intended to influence this procurement is permitted except by contacting Christopher Rogers (Designated Contact) at (212) 971-5342, ext.3020 or by e-mail at Christopher.Rogers@nyserda.ny.gov or Max Joel (Designated Contact) at (212) 971-5342, ext. 3035 or

by e-mail at Max.Joel@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Venice Forbes (Designated Contact) at (518) 862-1090, ext. 3507 or Venice.Forbes@nyserda.ny.gov. Contacting anyone other than the Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*** All proposals must be received by 3pm Eastern Time on the date noted above. Late, faxed, or emailed proposals will not be accepted.** Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Please note: for online submission, there are required questions that you will have to answer in addition to uploading attachments and you should allot at least 60 minutes to enter/submit proposals. The online proposal system closes promptly at 3pm Eastern Time, files in process or attempted edits or submission after 3pm Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on the "Current Opportunities" section of NYSERDA's website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

I. Introduction

Community solar enables customers to share in the benefits of solar power even if they live in an apartment or other building that cannot support a rooftop solar system. To help low-income New Yorkers reap the benefits of solar power, NYSERDA wishes to secure community solar subscriptions for low-income customers and provide them at no cost to more than 10,000 low-income New Yorkers.

NYSERDA requests proposals for Participating Facilities to serve Participating Subscribers with small, no-cost community solar subscriptions. A Participating Facility may comprise all or part of a solar photovoltaic project(s) interconnected under New York's CDG Project policy, subject to the rules described herein. Each Participating Facility will be managed by a Facility Sponsor, which will respond to this RFP, contract with NYSERDA, and be responsible for fulfilling the requirements described in this solicitation. As an optional component to the proposal, Facility Sponsors may also include Co-Benefits beyond the cost savings that will be delivered to Participating Subscribers.

II. Program Requirements

Proposers must complete a *Proposal Worksheet* using the template provided in Attachment B – Proposal Worksheet, which must be accompanied by documentation regarding project information, proposal information, and project eligibility.

A. Overview of Solar For All Participating Facilities and Facility Sponsors

1. Facility Sponsors will enter into a service contract with NYSERDA to allocate a portion of the CDG credits of a CDG Project to Participating Subscribers. The portion of the CDG Project allocated to Participating Subscribers will be the Participating Facility.
2. Facility Sponsors (or related parties) will be responsible for ensuring the construction, interconnection, and ongoing operation and management of the CDG Project.
3. Participating Facilities may be no greater than 1 MW DC. Participating Facilities may represent a portion of CDG Projects larger than 1 MW DC, and may represent all or a portion of CDG Projects smaller than 1 MW DC.
4. NYSERDA will be responsible for acquiring individual Participating Subscribers and will provide the Facility Sponsor with all necessary subscriber information for the utility CDG Allocation Form ("Allocation Form"). NYSERDA will maintain a backlist of Participating Subscribers, and the Facility Sponsor will update or replace Participating Subscriber information as directed by NYSERDA. NYSERDA anticipates that each Participating Subscriber will receive an allocation equivalent to approximately 1,000 – 2,000 kWh per year.

5. The Facility Sponsor will add the Participating Subscribers to the CDG Project's electric utility Allocation Form, and will provide NYSEERDA with verification of the utility's acceptance of the Allocation Form and the delivery of credits to the Participating Subscribers.
6. The Facility Sponsor will be responsible for all communication with the utility to ensure that Participating Subscribers receive the applicable CDG credits. The Facility Sponsor will promptly inform NYSEERDA of notification from the utility of any invalid subscriber accounts or other crediting issues, and will promptly modify subscriber information as directed by NYSEERDA.
7. The Facility Sponsor will bank any unallocated CDG credits from the Participating Facility to be allocated as directed by NYSEERDA prior to their expiration.
8. Facility Sponsors may not bill Participating Subscribers, or otherwise market products or services to Participating Subscribers except as approved by NYSEERDA in writing.
9. Subject to review and approval at NYSEERDA's sole discretion, the Facility Sponsor may elect to offer Participating Subscribers an "expanded subscription" for additional CDG credits, beyond the amount allocated under a Solar for All agreement, under a direct contract and billing arrangement between the Facility Sponsor and the Participating Subscriber.
10. The contract term for Participating Facilities will be ten (10) years.
11. Facility Sponsors will invoice NYSEERDA annually based on the projected CDG credits generated and allocated to Participating Subscribers by the Participating Facility for the subsequent year.
12. Annual payment to Facility Sponsors will be adjusted to reflect the difference between the projected and actual CDG credits generated and allocated to Participating Subscribers as documented by the Facility Sponsor ("annual true up"). In addition, the final annual payment will be calculated at 80% of the projected CDG credits; 20% will be held until the completion of the contract, when a final annual true up will occur.
13. The Participating Facility, and the Facility Sponsor's responsibilities, must be maintained in the event of a sale or other change in the status of the CDG Project.
14. The CDG Project and/or Participating Facility may make use of NY Green Bank financing or other NYSEERDA programs, subject to those programs' eligibility requirements and award processes.

B. Community Co-Benefits (Optional)

Facility Sponsors, as part of their proposal to this RFP, may elect to include commitments to Community Co-Benefits derived from the Participating Facility or associated CDG Project. Co-Benefits may include:

1. Workforce training and hiring commitments in local low-income communities.
2. Community-based or participant ownership models.
3. Other community or participant benefits.

Co-Benefits must be specific, viable, and enforceable; and must be supported by an inclusive and accessible process. Co-Benefits must be documented in the *Community Co-Benefits Plan* as described in **Section III. Proposal Requirements**, and Participating Facilities that include Co-Benefits will be subject to contingencies on program payments. Proposals that include Co-Benefits may be awarded additional points by the Scoring Committee as detailed in **Section IV. Proposal Evaluation**.

III. Proposal Requirements

Proposers must be the owner of an eligible CDG Project (see below) or have a binding commitment from the CDG Project owner that will allow the Proposer to meet all the requirements of a Facility Sponsor. The Proposer must document to NYSERDA's satisfaction that the owner of the CDG host meter, and/or other entities with an interest in the CDG Project, have waived any claims on the CDG Project that could hinder the performance of the Participating Facility or otherwise conflict with the requirements.

Proposals must be for Participating Facilities associated with CDG Projects in one of the state's Investor Owned Utility (IOU) service territories that are subject to the NY Public Service Commission's Order Establishing a Community Net Metering Program¹. CDG Projects in the service territory of the Long Island Power Authority are not eligible.

Proposals for Participating Facilities must demonstrate that the associated CDG Project is in an advanced state of development or has entered commercial operation as of August 2, 2018. If selected, the CDG Project must enter commercial operation within six (6) months of contract execution with NYSERDA, unless otherwise agreed by NYSERDA in writing. NYSERDA will determine eligibility based on the criteria set out below and documented per the Proposal Requirements. The Proposer must include with its proposal documentary evidence demonstrating the details listed below in **Sub-Section A. CDG Project Information, Eligibility Documentation, and Pricing**.

A. CDG Project Information, Eligibility Documentation, and Pricing [See Attachment B – Proposal Worksheet]

1. NY-Sun Incentive Application # and status
2. CDG Project location, electric utility, NYISO zone, date of operation, date of 25% interconnection payment (if applicable), VDER tranche status, and LSRV location (if applicable).
3. Technical information (azimuth, mount type, total installed capacity, inverter size, and estimated production) needed to project value of CDG credits per kWh and annual total (\$). Technical information will be verified prior to contracting.
4. Committed portion of injected annual production (also represented as kW and annual kWh equivalent) to CDG Project.
5. Bid price in \$ per kWh (also represented on an annual basis, fixed for the term of the agreement).
6. Documentation to NYSERDA's satisfaction that the Facility Sponsor either is the CDG Project owner (controls the CDG host meter) or has a contract with the CDG project owner authorizing the Facility Sponsor to control the CDG host meter in order to allocate CDG credits. Documentation to NYSERDA's satisfaction that the CDG Project owner is bound by the assignment clause of the contract so that the Participating Facility is maintained in the event of project sale.
7. CDG Project has completed Step 7 of the New York State Standardized Interconnection Requirements and Application process, has an executed Interconnection Contract, and made the full upgrade payment to the utility; or, if a Coordinated Electric System Interconnect Review ("CESIR") is not required, has an executed Interconnection Contract.
8. Site control for the CDG Project site for no less than 20 years documented by an executed lease agreement for the site, an executed agreement to purchase the site, or an executed

¹ New York Public Service Commission. *Order Establishing a Community Distributed Generation Program and Making Other Finding*. July 17, 2015. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={76520435-25ED-4B84-8477-6433CE88DA86}>.

license or other agreement granting exclusive right to use the site for the purpose of constructing and operating the CDG Project.

9. CDG Project has received all discretionary (non-ministerial) permits, approvals, and determinations from all Authorities Having Jurisdiction (AHJs), and is not subject to a solar moratorium in any AHJ; including SEQRA determination and special use permit where applicable.
10. CDG Project and Facility Sponsor have ability to securely exchange participating subscriber information with NYSEERDA, manage all communication with the utility necessary to ensure that participating subscribers receive the applicable CDG credits, and meet all other technical and administrative responsibilities.

B. Community Co-Benefits Plan (Optional)

Proposers that choose to include Co-Benefits in their proposal must complete a *Community Co-Benefits Plan* using the template provided in Attachment C – Co-Benefits Template, with accompanying documentation. The *Community Co-Benefits Plan* and accompanying documentation must address the following criteria:

1. Team and Qualifications
 - Summary of applicable background and experience, including active connections to the relevant community.
 - Specific role of each team member/organization in implementing the *Community Co-Benefits Plan*.
2. Inclusion and Engagement
 - Plan for facilitating wider community engagement on Co-Benefits planning and implementation, and/or description of prior engagement activities and outcomes.
 - Description of how stakeholder groups will have opportunities to provide feedback and input throughout the Co-Benefits planning and implementation process.
3. Oversight and Enforcement
 - Identification of a qualified government or non-profit agency that will provide long-term oversight and enforcement of the Co-Benefits implementation, including a description of the relevant experience of the organization.
 - Detailed description of the monitoring and oversight that will be provided, which includes an enforcement mechanism to address performance, timeframe for implementation, a process for the verification of Co-Benefits.
4. Co-Benefits Activities and Outcomes

Detailed description of the planned Co-Benefits, including specific and quantitative commitments, activities to be undertaken, and outcomes to be realized prior to and after initial allocation/commercial operation. The *Community Co-Benefits Plan* may include one or more of the Co-Benefits below and must be documented as described.

- Workforce training and hiring commitments in disadvantaged communities
 - Documentation of partnership(s) with local training and/or employment agencies.
 - Detailed plan for training and hiring, including job descriptions and wage targets.
- Community-based or participant ownership models
 - Documented commitment of anticipated community owners and/or facilitating representative organizations, and their participation (as applicable) in the project development process.

- Details on ownership and/or revenue sharing structure(s), including management, legal and financial terms and projected economic benefit(s) to community/participant owners.
- Details on project financing and sources, particularly locally-sourced financing.
- Documentation of protections in place to ensure that there will be no short or long-term negative financial impacts for low income participants/owners.
- Other Co-Benefits
 - Specific description and documentation of other community Co-Benefits associated with the project.

C. NYSERDA Solar For All Participating Facility Standard Contract

Participating Sponsors will execute the NYSERDA Solar For All Facility Standard Contract (Attachment A – Sample Agreement). Proposers may include a list of requested exception to the terms of the agreement with their proposals, which NYSERDA may accept or deny. Requests for exceptions will play no role in the evaluation of proposals.

IV. Proposal Evaluation

A. Clarification of Proposals and Interviews

While evaluating proposals, NYSERDA may request additional information about any item in a proposal. At NYSERDA's discretion, Proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.

B. Eligibility Review

Proposals will be reviewed for eligibility per the criteria detailed in Sect. III: Proposal Requirements. Proposals that are deemed ineligible may be resubmitted with modifications to subsequent solicitation rounds.

C. Scoring Process

For each proposal, NYSERDA will calculate the Participating Facility's Leverage Ratio. Leverage Ratio is defined as the ratio of the projected electric cost savings to income-eligible program participants per CDG credit received to the proposed price per CDG credit. Proposals with Leverage Ratios of less than 1.1 will be deemed ineligible.

Eligible proposals will be awarded up to 100 points based on Leverage Ratio. The Scoring Committee may award up to 10 additional points for the *Community Co-Benefits Plan*, with the total proposal score not to exceed 100 points. Co-Benefits will be evaluated based on viability, inclusion and governance, oversight and enforcement, and the Co-Benefits activities and outcomes as demonstrated in the Proposer's *Community Co-Benefit Plan* and accompanying documentation. Proposals will then be ranked by score.

Eligible proposals with the highest Leverage Ratios will be deemed fundable subject to the following limits:

- No more than 50% of total program funding will be awarded in any one RFP round.
- No more than 40% of total program funding will be awarded to any one proposer, including subsidiaries and related entities.
- No less than 20% of the total program funding will be awarded to Participating Facilities in the area served by National Grid, New York State Electric & Gas, and Rochester Gas & Electric.
- No less than 20% of the total program funding will be awarded to Participating Facilities in the area served by Central Hudson Gas & Electric and Orange & Rockland.

- No less than 20% of the total program funding will be awarded to Participating Facilities in the area served by Con Edison.

D. Program Policy Factors

NYSERDA reserves the right to accept or reject proposals based on the following Program Policy Factor(s):

- Geographic distribution.
- CDG Project size distribution.
- CDG Project owner and Facility Sponsor diversification.
- Inclusion of proposals offering Community Co- Benefits.
- Weighted average Leverage Ratio of all proposals funded.
- Total NYSEKDA investment in the CDG Project and/or Participating Facility.

V. General Conditions

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSEKDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSEKDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions 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." Information submitted to NYSEKDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSEKDA-Regulations.ashx>. However, NYSEKDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992 - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development
Division for Small Business
625 Broadway
Albany, NY 12207

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development
Minority and Women's Business Development Division
625 Broadway
Albany, NY 12207

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx> . Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department.

The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf> .

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. NYSERDA anticipates a contract duration of 10 years, unless NYSERDA management determines a different structure is more efficient based upon proposals received. A contract may be awarded based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each proposal should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the checklist questions. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately 6 weeks from the proposal due date of whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

Accessibility Requirements - If awardees from this solicitation will be posting anything on the web, or if the awardee will produce a final report that NYSERDA will post to the web, the following language must be included. NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see [NYSERDA's Accessibility Requirements](#).

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement. NYSERDA reserves the right to disqualify proposers based upon the results of

a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

VI. Attachments:

- Attachment A – Facility Standard Contract – Sample Agreement
- Attachment B – Proposal Worksheet
- Attachment C – Community Co-Benefits Plan Template



New York State Energy Research and Development Authority

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nysesda.ny.gov | info@nysesda.ny.gov

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19th Floor
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10018-7842

(P) 212-971-5342
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**West Valley Site
Management Program**

9030-B Route 219
West Valley, NY
14171-9500

(P) 716-942-9960
(F) 716-942-9961

RFP 3802 Attachment A: Solar For All Facilities Sample Agreement

Agreement No. _____

This Agreement ("Agreement") is entered into as of _____, 20__ (the "Effective Date") by and between the New York State Energy Research and Development Authority ("NYSERDA"), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and _____ ("Contractor"), a [insert as appropriate], having a principal business address of _____. NYSERDA and Contractor are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

Article I

Definitions

Actual Annual Production: The amount, in kWh, of the total electric energy actually produced by the CDG Project during any Contract Year, measured at the CDG host meter.

Participating Facility: The CDG Project or portion of the solar photovoltaic CDG Project that will be committed to performance under this Agreement.

Bid Price: A single fixed amount, expressed in cents/kWh, for the duration of the Contract Delivery Term. Subject to Article V, for all transactions contemplated and consummated under this Agreement the Bid Price shall be _____.

Quantity Percentage: The percentage of the CDG Project's Projected Annual Production that will be committed to performance under this Agreement. For all transactions contemplated and consummated under this Agreement the Quantity Percentage shall be ____%.

CDG Credits: The utility bill credits calculated under the Value of Distributed Energy Resources (VDER) rules and applied by the utility to customer accounts.

CDG Project: A solar photovoltaic project(s) interconnected under New York's Community Distributed Generation rules and located at _____.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy and (ii) all rights, abilities, permits and approvals to inject energy to the utility grid have been obtained.

Commercial Operation Milestone Date: Unless otherwise agreed by NYSERDA, the Commercial Operation Milestone Date shall be [six months from contract execution].

Contract Delivery Term: The period of performance under this Agreement. The Contract Delivery Term will commence on the first day of the first utility billing period of the CDG host meter during which CDG Credits are allocated to Participating Subscribers. The Contract Delivery Term shall extend for the term of the Contract Tenor.

Contract Tenor: The duration, in years, of the Contract Delivery Term; the Contract Tenor under this Agreement shall be [10] years.

Contract Year: A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term.

Nameplate Capacity: The gross generating capacity of the entire CDG Project, in MW. The Nameplate Capacity under this Agreement shall be ___ MW.

Projected Annual Production: The expected production of the CDG Project in kWh based on information and data provided as part of the Application submitted by Contractor to the Solar For All program, multiplied by the Quantity Percentage.

Quantity Percentage: The percentage of the CDG Project's Projected Annual Production that will be committed to performance under this Agreement. The Quantity Percentage must be at least ___% and may not exceed 100% of the Projected Annual Production. For all transactions contemplated and consummated under this Agreement the Quantity Percentage shall be ___%.

Participating Subscriber: Utility customers identified by NYSERDA for the allocation of CDG Credits under the terms of this Agreement.

Article II

NOTE: NYSERDA UNDERSTANDS THAT THE CDG CREDIT ALLOCATION PROCESS MAY CHANGE OVER TIME AND MAY NOT BE UNIFORM ACROSS ALL UTILITIES. UPON AWARD, NYSERDA WILL WORK WITH THE CONTRACTOR TO ADAPT THESE TERMS AND CONDITIONS TO THE RELEVANT PROCESSES AND PROCEDURES. SHOULD THE PROCEDURES AND RULES BE MODIFIED BY THE UTILITY OR BY ORDER OR ACTION OF THE PUBLIC SERVICE COMMISSION OR THE DEPARTMENT OF PUBLIC SERVICE, NYSERDA WILL NEGOTIATE MODIFICATIONS TO PRESERVE THE INTENT AND RIGHTS OF THE PARTIES.

Allocation of CDG Credits

Section 2.01. Contractor will be responsible for ensuring the construction, interconnection, and ongoing operation and management of the CDG Project.

Section 2.02. NYSERDA will be responsible for acquiring individual Participating Subscribers in numbers sufficient to allow the allocation of all CDG Credits generated by the Participating Facility. NYSERDA will provide the Contractor with all necessary subscriber information for the utility CDG Allocation Form ("Allocation Form"), including the allocation percentage to each Participating Subscriber.

Section 2.03. NYSERDA will maintain a backlist of Participating Subscribers, and the Contractor will update or replace Participating Subscriber information as directed by NYSERDA.

Section 2.04. The Contractor will promptly add the Participating Subscribers to the CDG Project's electric utility Allocation Form, and will provide NYSERDA with verification of the utility's acceptance of the Allocation Form and the delivery of CDG Credits to the Participating Subscribers.

Section 2.05. The Contractor will be responsible for all communication with the utility to ensure that Participating Subscribers receive the applicable CDG Credits. The Contractor will promptly inform NYSERDA of notification from the utility of any invalid subscriber accounts or other crediting issues, and will promptly modify subscriber information as directed by NYSERDA.

Section 2.06. The Contractor will bank any unallocated CDG credits from the Participating Facility to be allocated as directed by NYSERDA prior to their expiration.

Section 2.07. Contractor may not bill Participating Subscribers, or otherwise market products or services to Participating Subscribers except as approved by NYSERDA in writing.

Article III

Confidentiality

Section 3.01. Contractor acknowledges that in the performance of the Work under this Agreement, NYSERDA will be providing Contractor with personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees to use at least the same care and discretion to avoid disclosure of such information as it uses with its own similar information it does not wish to disclose, but in no event less than a reasonable standard of care. Contractor shall promptly provide NYSERDA Party with notice of any actual or threatened breach of the terms of this Agreement or unauthorized disclosure.

Article IV

Payment

Section 4.01. Invoices. Invoices shall be submitted electronically to NYSERDA's online invoice system at: <https://services.nyserdera.ny.gov/Invoices/> or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Contractor Portal with the Contractor's log-in credentials. If electronic submission is not possible, invoices may be addressed to NYSERDA, "Attention: Accounts Payable." Invoices shall reference the purchase order number, which will be generated and provided to the Contractor upon contract execution, and the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall include a statement of the amount due and payable by NYSERDA to Contractor, which amount shall be calculated in accordance with Section 4.02.

Section 4.02. Initial Payment. The amount of the Initial Payment shall be (to be determined; based on proposal, as Projected Annual Production multiplied by the Quantity Percentage multiplied by the Bid Price), and shall become payable after the Contractor demonstrates through submittal the utility CDG Host Summary and Satellite Allocation Breakdown, or equivalent utility documentation, that the CDG Credits associated with the Quantity Percentage have been applied to Participating Subscriber's utility bills.

Section 4.03. Annual Payments. Beginning with the second Contract Year, Contractor shall submit invoices to NYSERDA annually at such time that Contractor can demonstrate to NYSERDA through submittal of the utility CDG Host Summary and Satellite Allocation Breakdown, or equivalent utility documentation, the Actual Annual Production and the Annual CDG Credit allocation to Subscribers for the preceding Contract Year. Each Annual Payment for the duration of the Contract Delivery term shall be (to be determined; based on proposal, as Projected Annual Production multiplied by the Quantity Percentage multiplied by the Bid Price), subject to adjustments under Article V.

Section 4.04. Prompt Payment Policy. NYSERDA will make payments to the Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by check or wire transfer to an account designated by the Seller. NYSERDA will not pay any invoice not accompanied by all information required in accordance with Section 6.01.

Section 4.05. Maximum Commitment/Limitation. number of years in the Contract Delivery Term. The maximum aggregate amount payable by NYSERDA to Seller hereunder is (\$ _____00).

Article V

Adjustments

Section 5.01. Adjustments.

NYSERDA may adjust its contractual obligations under this Agreement under the following circumstances:

- (a) Should the CDG Project fail to generate energy in a number at least 85% of the Projected Annual Production for two (2) consecutive Contract Years, NYSERDA may at its option upon Notice to Contractor, modify this Agreement by adjusting the Projected Annual Production for the remainder of the Contract Delivery Term to equal the highest Actual Annual Production during any Contract Year over that two-year period multiplied by the Bid Quantity Percentage.
- (b) Should the Nameplate Capacity of the CDG Project differ from that proposed, Contractor agrees that NYSERDA may at its option upon Notice to Contractor modify the Contract by adjusting the Quantity Percentage or other relevant terms to reflect the actual installed Nameplate Capacity.

- (c) Annual Payments will be adjusted to reflect the difference between the Projected Annual Production and the Actual Annual Production for the previous Contract Year (“annual reconciliation”), as evidenced by the utility CDG Host Summary and Satellite Allocation Breakdown, or equivalent utility documentation. In addition, the final Annual Payment will be calculated at 80% of the multiplicative product of (a) the Projected Annual Production; (b) the Quantity Percentage; and (c) the Bid Price; 20% will be held until the expiration of the Contract Delivery term, when a final reconciliation will occur.
- (d) Annual Payments will be adjusted if, due to nonperformance by the Contractor under this Agreement or under the applicable utility CDG Operating Procedure, any Market Transition Credit value is lost. The Annual Payment will be reduced by the total value of the MTC lost during the year. [Note: NYSERDA will work with awarded Contractors to adapt this section and other applicable process and procedures to the rules and requirements of the distribution utility. Reductions in payment will be made only where the failure to allocate CDG Credits to Subscribers was at the clear fault of the Contractor].

Article VI

Records and Reports

Section 6.01. Monthly Reports. NYSERDA will require the Contractor to provide the utility CDG Host Summary and Satellite Allocation Breakdown, or equivalent utility documentation, on a monthly basis. All information related to individual subscribers who are not Participating Subscribers will be removed or redacted by the Contractor before the Satellite Allocation Breakdown is provided to NYSERDA.

Section 6.02. Progress Reports/Material Change. In each month following the Effective Date, and continuing through Commercial Operation, Contractor shall provide written Progress Reports to NYSERDA which shall describe at a minimum (1) the status of development and/or construction activities with regard to the CDG Project; (2) an estimated date for Commercial Operation; and (3) an estimated date for the initial submittal of the CDG Allocation Form to the utility by the Contractor.

Section 6.03. Maintenance of Records. Contractor shall keep, maintain, and preserve at its principal office throughout the term of this Agreement and for a period of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Contractor’s performance under the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Contractor in the course of such performance.

Article VII

Audit

Section 7.01. 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 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.

Article VIII

Assignments

Section 8.01. General Restrictions. Except as specifically provided otherwise in this Article VIII, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld.

Section 8.02. Contractor may, without NYSERDA's prior written consent, grant a security interest in or assign this Agreement as collateral in connection with financing arrangements; Contractor shall promptly notify NYSERDA of the completion and the nature of any such grant or assignment.

Section 8.03. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

Article IX

Contractor's Warranties and Guarantees

Section 9.01. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) (1) that Contractor is a [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (2) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to

construct, finance, own, maintain and operate the Participating Facility, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (3) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary;

- (b) that the execution, delivery and performance by Contractor, the entry into this Agreement by Contractor, and the consummation of the transactions contemplated by this Agreement: (1) have been duly authorized by all requisite corporate action (including any required action of its members); and (2) will not (i) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or any provision of the limited liability company agreement or other governing documents of Contractor; (ii) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any indenture, agreement (including the respective limited liability company agreements of Contractor), mortgage, deed of trust, note, lease, contract or other instrument to which Contractor is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of the Contractor;
- (c) that Contractor 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;
- (d) that this Agreement will be duly executed and delivered by Contractor and will constitute the legal, valid and binding obligation of Contractor enforceable against in accordance with the terms thereof;
- (e) as of the Effective Date, that there are no existing undisclosed or threatened material legal actions, claims, or encumbrances, or liabilities that may adversely affect Contractor's performance of this Agreement or NYSERDA's rights hereunder;
- (f) that Contractor has no knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement or the documents submitted to NYSERDA under the Solar for All solicitation contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (g) Seller certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Article X

NYSERDA's Warranties and Guarantees

Section 10.01. As a material inducement to Contractor to enter into this Agreement, NYSERDA makes the following warranties and guarantees, as of the Effective Date all of which shall survive the execution and delivery of this Agreement:

- (a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York;
- (b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;
- (c) that the execution, delivery and performance by NYSERDA of this Agreement will not (1) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or, any provision of the Public Authorities Law; (2) violate, conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default or event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (3) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;
- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof;
- (e) that NYSERDA is familiar with and in compliance with all general and specific laws, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets which could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Article XI

Indemnification

Section 11.01. Indemnification. 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, reasonable attorneys' and/or experts' 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 Contractor's performance under this Agreement. The obligations of Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XII

Insurance

Section 12.01. Maintenance of Insurance; Policy Provisions. Contractor, at no cost to NYSERDA, shall maintain or cause to be maintained, beginning with the commencement of construction of the Participating Facility and continuing throughout the duration of the Contract Delivery Term, insurance of the types and in the amounts specified in Section 12.02 (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 insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 12.02. Types of Insurance. Contractor shall be required to maintain 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 [insert: \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury or sickness or death of any one person; [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury, sickness or death in any one accident or disaster; and [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of property damage in any one accident or disaster.

Section 12.03. Delivery of Policies; Insurance Certificates. Prior to the commencement of construction of the Participating Facility, Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article XII and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event that any policy furnished or carried pursuant to this

Article XII will expire on a date prior to the expiration date of this Agreement, Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and 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, upon request Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XIII

Events of Default

Section 13.01. Event of Default. For the purposes of this Agreement, “Event of Default” shall mean any of the following:

- (a) Representations and Warranties. Any representation or warranty made in this Agreement that shall prove to have been false or misleading in any material respect as of the time made or deemed to be made; or
- (b) Other Obligations. A Party shall default in the performance of any of its obligations under this Agreement and such default shall continue un-remedied for a period of 30 days after the defaulting Party receives Notice or otherwise has actual knowledge thereof; or
- (c) Voluntary Proceedings. A Party shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) make a general assignment for the benefit of its creditors; (c) commence a voluntary case under the Bankruptcy Code; (d) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (e) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (f) take any corporate action for the purpose of effecting any of the foregoing; or
- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (a) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (c) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-stayed and in effect, for a period of 60 or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or
- (e) Judgments. A judgment or judgments for the payment of money in the amount of \$5,000,000 or more shall be rendered by a court or courts against Seller, and the same

shall not be paid or otherwise discharged for a period of more than 60 days unless such judgment has been stayed, released or vacated; or

- (f) Commercial Operation. Failure of the CDG Project to commence Commercial Operation at a minimum of 80% of the (Nameplate Capacity X Quantity Percentage) on or before the Commercial Operation Milestone Date; or
- (g) Abandonment. Contractor's abandonment of the Participating Facility or its intentional delay of completion of construction in connection therewith; or
- (h) Failure to Produce. The failure by the Participating Facility to generate energy in a quantity equaling at least than 65% of the Projected Annual Production during any Contract Year; or
- (i) Failure to Make Payment. Failure by NYSERDA to make payments as properly due hereunder.

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;
- (b) at any time by the mutual written consent of Contractor and NYSERDA;
- (c) unless otherwise mutually agreed upon by NYSERDA and Contractor in writing, on the expiration of the Contract Delivery Term;
- (d) by NYSERDA, if any information or document or statement furnished by Contractor in connection with this Agreement or the documents submitted to NYSERDA under the Solar for All solicitation are found to contain any untrue statement of a material fact or have omitted a material fact;
- (e) by NYSERDA in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete.

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder. In addition, the Parties hereto agree that,

Section 14.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Article XV

Article XVI

Force Majeure

Section 16.01. Force Majeure. 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 therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. Variability in the frequency or force of the wind, of rainfall, or of water levels will in no event constitute force majeure events. Failure by Seller to obtain or secure any permit or approval or delay in obtaining any permit or approval of any sort with regard to Seller's performance under the Agreement shall not constitute a force majeure event.

Article XVII

Compliance with Certain Laws

Section 17.01. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. 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 a 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.

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

Section 17.03. All Legal Provisions Deemed Included. It is the intent and understanding of the Seller 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 Seller, 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.

Section 17.04. 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 Participating Facility over the duration of the Contract Delivery Term. The Solar for All award nor this Agreement in any way replace or modify the necessity or applicability of any permit or approval process including SEQRA by any jurisdiction. NYSERDA's obligations to make payments to Contractor are conditional on the acquisition by Contractor 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 or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Participating Facility, 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.

Section 17.05. 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 such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

Article XVIII

Additional Provisions

Section 18.01. Forward Contract. Each Party represents and warrants to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, that this Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be "contractual rights" as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 18.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier Termination of this Agreement under Article XIV, neither Party shall have any further obligation to the other, except that Sections _____ and NYSERDA's Payment obligation under Article IV shall survive.

Section 18.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver

of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by NYSERDA in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by NYSERDA of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 18.05. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Contractor and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other relationship between NYSERDA and Contractor for any reason.

Section 18.06. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Article XIX

Notices, Entire Agreement, Amendment, Counterparts

Section 19.01. 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:
- (1) via certified or registered United States mail, return receipt requested;
 - (2) by personal delivery;
 - (3) by expedited delivery service; or
 - (4) 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:

Article XX

Publicity

Section 20.01. Publicity. Contractor will collaborate with NYSERDA's Communications Unit, or NYSERDA program staff, with regard to the preparation of any press release, public announcement, publication or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA. Staff can be contacted by calling 518-862-1090. In any such press release, public announcement publication, or media interview Contractor and/or the Owner of the Participating Facility and/or its employees shall credit NYSERDA and the funding participation of the Solar for All Program. Contractor will not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA or the State of New York.

Article XXI

Freedom of Information Law

Section 21.02. 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).

Section 21.03. 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.

Section 21.04. 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 Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

Contractor

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____)

SS:

COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary

EXHIBIT A

**EXHIBIT A
STATEMENT OF WORK**

To be Added at Time of Contract.

If the Proposal received points for a Community Co-Benefits Plan, a description of the obligations and responsibilities of the Parties shall be included in this Statement of Work.

EXHIBIT B

REVISED 5/12

**STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS¹**

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

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by 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, sexual orientation, age, disability, genetic predisposition or carrier status, 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 Agreement. 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.

¹ NYSERDA's Standard Forms and Agreements can be found on NYSERDA's website:
<https://www.nyserda.ny.gov/Funding-Opportunities/Standard-Forms-and-Agreements>

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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof

which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to 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.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.aspx>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. 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 A, the terms of this Exhibit A shall control.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act

1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. 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.

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.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See www.ogs.ny.gov/about/regs/ida.asp).

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.²

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

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

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "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 Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for 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 NYSERDA may reasonably require, including but not limited to any requirements set forth in this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

² This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

(g)(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, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement 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 Agreement 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 NYSERDA for the portion working, completed or delivered, NYSERDA 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.

(h) “Set-off” means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, 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 NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (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; or

(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 NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) 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 NYSERDA 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, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment 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 this Agreement or other State or Federal mandate has not been submitted to NYSERDA 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 NYSERDA and the date when NYSERDA 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 this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA 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, NYSERDA 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 NYSERDA 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 NYSERDA, 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 NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). 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.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. 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 notice address set forth in Article XIX of this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA'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 thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that 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 Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an

interest payment to a Contractor pursuant to this Exhibit 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 NYSERDA 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.

RFP 3802 Attachment B: Solar For All Facilities Proposal Worksheet Instructions

All proposers must read the **RFP 3802: Solar For All Facilities** before completing this Proposal Worksheet. The Proposal Worksheet has three sections: ***Instructions***, ***Project & Proposal Information***, and ***Eligibility Checklist & Docs*** (see worksheet tabs below).

All fields in the ***Project & Proposal Information*** section should be completed for the CDG Project containing the proposed Solar For All Facility. The information in the *Project Information* sub-section should be current as of the proposal submission, and should match the corresponding NY-Sun Incentive record. All fields in the *Proposal Details* sub-section should be specific to the portion of the CDG Project that is being proposed for this program (the Solar For All Facility).

All of the eligibility criteria listed in the ***Eligibility Checklist & Docs*** section must be met and all corresponding documents uploaded with the Proposal Worksheet. Proposals that have not attested to and documented all eligibility requirements in *Proposal Eligibility Checklist* sub-section will not be considered. The *Required Documents Upload List* sub-section contains all required materials that must be included.

**RFP 3802 Attachment B: Solar For All Facilities Proposal Worksheet
Project & Proposal Information**

Project Information	
NY-Sun Incentive Application Number	
Street Address	
City	
Zip Code	
Electric Utility	<Select One>
NYISO Zone	<Select One>
Azimuth	<Select One>
Mount	<Select One>
CDG Project Status	<Select One>
Date of Operation (Actual or Expected)	
Date of 25% Interconnection Payment (if applicable)	
CDG Project VDER Tranche Status	<Select One>
LSRV Location (specify substation name if applicable)	
CDG Project Total Installed DC Capacity (kW)	
CDG Project Inverter Size (kW)	
CDG Project Estimated Year 1 Annual Energy Production (kWh)	

Proposal Details	
Solar For All Facility Installed DC Capacity (kW)	
Percentage of CDG Project Capacity Committed to Solar For All Facility (%)	#DIV/0!
Solar For All Facility Estimated Year 1 Energy Production (kWh)	#DIV/0!
Proposal Price (\$/kWh)	\$ -
Estimated Annual NYSEDA Payment	#DIV/0!

RFP 3802 Attachment B: Solar For All Facilities Proposal Worksheet Eligibility Checklist & Documents

Proposal Eligibility Checklist	
Proposer either owns the CDG Project or has a binding commitment from the CDG Project owner that will allow the Proposer to meet all the requirements of a Facility Sponsor. Proposer has also provided all necessary documentation related to ownership.	<Select One>
CDG Project has an approved application for NY-Sun incentives and all necessary documentation has been provided to NYSERDA.	<Select One>
Proposer has obtained all discretionary (non-ministerial) permits, approvals, and determinations from all Authorities Having Jurisdiction (AHJs); including SEQRA determination and special permits where applicable. Proposer has also provided all necessary documentation for all permits AND documentation that the project is not subject to a solar moratorium in any AHJ.	<Select One>
Proposer has obtained site control for the CDG Project site for no less than 25 years via Executed Lease Agreement, Executed Agreement to Purchase Site, or Executed License/Agreement Granting Exclusive Rights. Proposer has provided all necessary documentation for site control.	<Select One>
CDG Project has completed Step 7 of the New York State Standardized Interconnection Requirements and Application process, including the execution of an Interconnection Contract and submission of a full upgrade payment to the utility OR CDG Project has an executed Interconnection Contract in lieu of a Coordinated Electric System Interconnect Review ("CESIR"). Proposer has provided all necessary documentation related to interconnection.	<Select One>
CDG Project owner attests to the ability to meet all technical and administrative requirements for Participating Facility management, reporting, and invoicing procedures described in Section II.A, Section III.A, and Sample Agreement.	<Select One>
CDG Project owner attests that the Facility Sponsor either controls the CDG host meter or has a contract with the CDG project owner authorizing the Facility Sponsor to control the CDG host meter in order to allocate CDG credits. Proposer has provided all necessary documentation related to the host meter.	<Select One>
CDG Project and Facility Sponsor attest that they have the ability to exchange participating subscriber information with NYSERDA, manage all communication with the utility necessary to ensure that participating subscribers receive the applicable CDG credits, and meet all other technical and administrative requirements for Participating Facility management, reporting, and invoicing procedures described in Section II.A, Section III.A, and Sample Agreement.	<Select One>

Required Document Upload List
<ul style="list-style-type: none"> Documentation of all discretionary (non-ministerial) permits, approvals, statement that the project is not subject to any solar moratoria, and determinations from all Authorities Having Jurisdiction (AHJs). This includes a SEQRA determination and special use permit where applicable.
<ul style="list-style-type: none"> Documentation of site control for the CDG Project site for no less than 25 years, documented by an executed lease agreement for the site, an executed agreement to purchase the site, or an executed license or other agreement granting exclusive right to use the site for the purpose of constructing and operating the CDG Project.
<ul style="list-style-type: none"> Documentation that the CDG Project has a completed Step 7 of the New York State Standardized Interconnection Requirements and Application process, has an executed Interconnection Contract, and made the full upgrade payment to the utility; or, if a Coordinated Electric System Interconnect Review ("CESIR") is not required, has an executed Interconnection Contract.
<ul style="list-style-type: none"> Documentation of ability to meet all technical and administrative requirements for Participating Facility management, reporting, and invoicing procedures described in Section II.A, Section III.A, and Sample Agreement. [See RFP 3802 Solar For All Facilities].
<ul style="list-style-type: none"> Documentation to NYSERDA's satisfaction that the Facility Sponsor either is the CDG Project owner (controls the CDG host meter) or has a contract with the CDG project owner authorizing the Facility Sponsor to control the CDG host meter in order to allocate CDG credits. Documentation to NYSERDA's satisfaction that the CDG Project owner is bound by the assignment clause of the contract so that the Participating Facility is maintained in the event of project sale.

SECTION 1—TEAM AND QUALIFICATIONS

Identify key individuals and organizations involved in the planning and implementation of the community co-benefits associated with the proposed Solar For All facility and/or associated Community DG Project. Please include all supporting documentation as additional attachment(s).

Provide the following details for each team member (or organization):

- Summary of relevant background and experience including active connections to local community
- Role(s) in the planning and implementation of co-benefits

Text boxes expand as you type to allow for content.

SECTION 2 — INCLUSION AND ENGAGEMENT

Describe the stakeholder and community outreach process related to the co-benefits. Please include all supporting documentation as additional attachment(s).

Provide the following details:

- Description of the plan to facilitate wider community engagement
- Prior engagement activities
- Overview of feedback opportunities for stakeholder groups during the co-benefits planning process

Text boxes expand as you type to allow for content.

SECTION 3 — OVERSIGHT AND ENFORCEMENT

The proposal *must* identify a qualified government or non-profit agency to provide long-term oversight and enforcement of the community co-benefits. Please include all supporting documentation as additional attachment(s).

Provide the following details regarding the entity(s) selected for oversight and enforcement:

- Capacity to monitor implementation of co-benefits, and relevant experience
- Timeframe and process for oversight and verification of co-benefits
- Enforcement mechanism for a failure to implement co-benefit commitments with planned timeframe

Text boxes expand as you type to allow for content.

SECTION 4 — COMMUNITY CO-BENEFITS ACTIVITIES AND OUTCOMES

Using the provided template, detail the activities and outcomes associated with the co-benefits addressed in your proposal. Please duplicate the template below for each co-benefit included in your proposal. For each co-benefit, describe the specific activities that are proposed, who on your project team will be responsible, and what outcomes/documentation can be expected. Please attach all supporting documentation as additional attachment(s). **A NYSERDA award and initial payment will be contingent on the completion and documentation of the planned activities and outcomes.**

Community Co-Benefit Short Title #1 (Ex. Workforce Training and Hiring in Low-Income Communities)	
<p>Description <i>Provide a detailed description of the planned co-benefit, include specific and quantitative commitments.</i></p>	
<p>Activities and Outcomes To-Date <i>Describe any activities related to this co-benefit already undertaken and resulting outcomes. Provide documentation as attachment(s) to this proposal.</i></p>	
<p>Activities and Outcomes Prior to Commercial Operation/Initial Allocation <i>Describe planned activities and projected outcomes that will occur between proposal submission and commercial operation and/or initial allocation of the Solar For All Facility, as well as documentation that will be provided to NYSERDA.</i></p>	
<p>Activities and Outcomes After Commercial Operation/Initial Allocation <i>Describe planned activities and projected outcomes that will occur between proposal submission and commercial operation and/or initial allocation of the Solar For All Facility.</i></p>	