

ATTACHMENT A

PON 1050 ELIGIBLE INSTALLER AGREEMENT

This agreement (“Agreement”) is entered into by and between the New York State Energy Research and Development Authority (“NYSERDA”), having its principal place of business at 17 Columbia Circle, Albany, New York and [name of Eligible Installer], of [insert Eligible Installer address] (the “Eligible Installer”)(collectively “the Parties”), to govern the rights and responsibilities of the Parties with respect to the procurement, construction and installation (“Installation”) by the Eligible Installer of photovoltaic energy systems (“PV Systems”) approved under and through NYSERDA Program Opportunity Notice Number 1050 “Incentives for Eligible Solar Installers” (“PON 1050”), and to otherwise effectuate the purposes of NYSERDA PON 1050. The terms, conditions and provisions of PON 1050 are incorporated herein and made part hereof by reference.

WHEREAS, NYSERDA has been designated by the New York State Public Service Commission as the administrator of the New York State Renewable Portfolio Standard program, which program was established to increase the percentage of electricity consumed in the State that is derived from renewable generation sources; and

WHEREAS, NYSERDA has issued PON 1050 for the purpose of furthering the objectives of the Renewable Portfolio Standard by supporting the development of the PV industry in New York State and by providing financial incentives (“Incentives”) for the Installation of PV Systems that meet the requirements of PON 1050 (“PV Program”), NYSERDA and the Eligible Installer agree to be bound, for purposes of the PV Program, by the following terms and conditions; and

WHEREAS, the success and future of this publicly-funded program depends on the performance and integrity of Eligible Installers in their dealings with the public and the Installation of PV Systems; and

WHEREAS, this Agreement has been designed to foster and protect the integrity of the PV Program, and will be enforced; and

WHEREAS, in its role as administrator of the PV Program NYSERDA reserves the right to deny Eligible Installer status to any applicant and to revoke such status where in its judgment such action is in the best interests of the PV Program.

Article 1: Participation in the Program

Section 1: Participation. The Eligible Installer is authorized to submit Applications for Incentives under PON 1050. Subject to the terms and conditions of this Agreement, NYSERDA will pay Incentives, in the amount approved, to Eligible Installers who install approved, new, grid-connected PV Systems for Eligible Customers. All PV Systems, system components, and

Installations must be in conformance with the design as described in the corresponding approved Application for Incentives.

Article 2: Eligible Customers

Section 1: Eligible Customers. Eligible Customers are New York State electricity distribution customers of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation who pay the Renewable Portfolio Standard/Systems Benefits Charge. (“RPS/SBC”).

Article 3: Incentives

Section 1: Incentive Amounts. A description of the amounts, limitations and availability of Incentives is set forth at Section 2 of PON 1050. The amounts, limitations, and availability of Incentives with regard to each Application for Incentives submitted by an Eligible Installer will be those appearing in Section 2 of PON 1050, as published on NYSERDA’s website at www.nyserdera.org at the time that NYSERDA receives the Application for Incentives.

Section 2: Right to Change or Reduce Incentives. NYSERDA reserves the right to change or reduce the Incentives for PV Systems being offered under the PV Program, at any time. Written notice of all such changes or reductions will be promptly provided to the Eligible Installer will be posted on NYSERDA’s website. Any change in Incentive levels will not affect Incentives or Incentive reservations already approved by NYSERDA. Eligible Installers will consult NYSERDA’s website on a frequent basis regarding PV Program rules and Incentive levels.

Section 3: Incentive Payment to Customers. Eligible Installers are required to pass the full and entire approved incentive amount to the customer in a timely manner.

Article 4: PV System Components

Section 1: New Components. All components, as described in this Article, to be Installed as part of an approved PV System as to which Incentives are requested must be new. With the exception of the monitoring meter(s) as described in Article 4, Section 4, the use of used or refurbished equipment is not permitted under the PV Program.

Section 2: Qualified Solar Modules. All PV modules, including building-integrated PV modules, must be certified as meeting all applicable standards of the Institute of Electrical and Electronics Engineers (“IEEE”) and Underwriter’s Laboratory (“UL”).

Section 3: Inverters. All inverters must be certified as meeting all applicable standards of IEEE and UL and must meet the standards of the New York State Public Service Commission (www.dps.state.ny.us/SIRDevices.PDF) and the applicable distribution utility.

Section 4: Monitoring Equipment. Each PV System must include, at a minimum, a meter or meters displaying (a) instantaneous AC power, and (b) cumulative total AC energy production. Such meter(s) must have a minimum accuracy of 5% and a certificate of compliance from the manufacturer. Remanufactured utility-style meters are permitted if they are certified as calibrated to the applicable ANSI standards for electricity metering. The meter(s) must include numerical displays (“easy-read type”) in watts or kilowatts for power and kilowatt-hours or megawatt-hours for energy. The energy metering data must be automatically stored independently of the inverter display. Examples include a separate utility-style meter or an inverter-based monitoring system that exports data at least daily to a computer for storage. The energy value displayed should be the total production for the life of the system. Battery-based systems may require multiple energy meters to capture the net production considering the critical load panel, export to the grid and import from the grid for battery charging.

Section 5: Other Electrical Components. All other electrical components of each PV System, including, but not limited to, charge controllers, batteries, wiring, and metering equipment must be certified as meeting the requirements of all relevant national and New York State codes and standards.

Article 5: PV System Requirements

Section 1: New Installation. Incentives are only available for PV Systems that have not been installed (partially or completely) prior to NYSERDA approval of an incentive application. PV System Installations that commence prior to NYSERDA’s approval of the corresponding Application for Incentives will become ineligible for the payment of Incentives at such time as NYSERDA determines that the Installation was not new as described herein.

Section 2: Grid Connection. To be eligible for Incentives, all PV Systems must be grid-connected, end-use applications. End-use PV Systems are those where the PV System is connected on the customer’s side of the electric meter, and electricity generated by the PV System offsets the customer's electricity purchases.

Section 3: Approved System Design. PV Systems must be Installed in accordance with the design and PV System components submitted to and approved by NYSERDA. Any change in PV System design from the approved design must be approved in writing by NYSERDA prior to Installation of the PV System. Incentives will not be paid for PV Systems that are Installed prior to approval from NYSERDA, or for PV Systems that are not installed according to the design submitted to and approved by NYSERDA.

Section 4: Interconnection. The Eligible Installer is required to ensure that all approved PV Systems that are designed to be interconnected to the electric grid have an appropriate interconnection agreement that meets New York State Standard Interconnection Requirements, and must ensure that all approved systems are installed in compliance with that agreement.

Section 5: Compliance with Laws and Codes. All approved PV Systems, system components, and Installations must comply with any and all manufacturers’ installation requirements,

applicable laws, regulations, codes, licensing and permit requirements, including but not limited to, the New York State Building Code, the National Electric Code, New York State's Standard Interconnection Requirements and all applicable state, city, town, or local ordinances or permit requirements.

Section 6: PV System Warranty. The Eligible Installer must provide the purchaser of the PV System with a full 5-year transferable warranty. The warranty must cover all components of the generating system against breakdown or degradation in electrical output of more than ten percent from their original rated electrical output. The warranty shall cover the full costs, including labor, of repair or replacement of defective components or systems. The Eligible Installer is responsible for providing warranty coverage in a timely manner regardless of the level of support from the equipment manufacturer. Batteries must be covered by a minimum two year warranty.

Article 6: Applications for Incentives

Section 1: Each Application for Incentives must include a completed and accurate copy of each of the following:

- A. Incentive Application Form. A completed Incentive Application Form (see Attachment C), signed by both the Eligible Installer and the customer must be submitted with each application for incentives.
- B. Site Map. The site map must include: location of all PV System components including panels, the inverter, system orientation and tilt angle, location of batteries (if any), lockable disconnect switch, point of connection with utility system, easy-to-read meter, customer name and address, and Eligible Installer name and number.
- C. Photo. Photo(s) of the array location, sufficient to depict site.
- D. Three-Line Drawing. A legible diagram using unique line characteristics and standard symbols to clearly describe the solar electric system as installed. The three lines to be shown are: hot or powered conductor(s), neutral conductor(s), and equipment grounding conductor(s). Each conductor's size and type is to be shown, as well as the relevant conduit characteristics. The configuration of the subarrays/arrays is to be shown. The voltage and amperage ratings of all combiner and/or transition boxes, overcurrent devices, switches, inverters, batteries and other relevant equipment are to be shown, as applicable.
- E. System Output. An estimate of annual system output in kWh.
- F. System Loss Analysis. The analysis must address all potential system output losses (kilowatt hours or kWh generated after all equipment losses are applied) associated with shading, system orientation, tilt angle, etc. Such losses must be detailed using industry accepted shading and orientation tools, verifiable assumptions and calculations. In cases where trees or any other obstruction must be removed or moved in order to meet the program rules, incentive payment will not be made until a new system loss analysis has been submitted and reviewed by NYSERDA. Photos may also be required in order to determine that the system meets the shading and orientation requirement.

- G. Utility Bill. A copy of the customer's utility bill or other proof that the customer pays the Renewable Portfolio Standard/Systems Benefits Charge must be included. The site address on the utility bill must match the site address on the Incentive Application Form. NYSERDA may request documentation of the customer's historic usage. For new construction, information on potential electric usage may be required.
- H. Permits. Copies of all necessary permits, approvals, certificates, etc must be attached for all non-residential systems. Residential customers may submit permits with the application or the initial invoice. Invoices for PV Systems without permits will be rejected. All permits must clearly reference installation of the approved PV System at the customer site.
- I. Environmental Assessment. For all projects that include the installation of PV panels with total panel surface area exceeding 4,000 square feet, an environmental assessment form must be completed and the project must satisfy the New York State Environmental Quality Review Act (SEQRA). Installers must indicate if PV panel surface area exceeds 4,000 square feet and the NYSERDA Project Manager will advise the installer on proceeding with SEQRA. A copy of the SEQRA form can be found on the information for installer's page of the www.PowerNaturally.org website.
- J. Customer Purchase Agreement. A copy of the Customer Purchase Agreement, which must meet the requirements of Section 2, below.

Section 2: Customer Purchase Agreement. Each Incentive Application Form must be accompanied by a signed copy of a written Customer Purchase Agreement. NYSERDA may reject an Application for Incentives if it is received by NYSERDA more than 45 days from the date of the customer's execution of the Customer Purchase Agreement. Each Customer Purchase Agreement must include the following:

- A. Installation location, including town, street and number, if applicable.
- B. Installation schedule (a realistic installation and interconnection schedule that takes into account NYSERDA and utility review requirements. For example, incentive applications should not have an expected installation date that does not include adequate time for NYSERDA to receive, review, and notify an Eligible Installer and the customer regarding the status or approval of an application.
- C. System description, including a description of the PV System being purchased and an outline of system specifications, the make and model of major system components, identification and location of easy-to-read meter, references to UL listing, etc.
- D. Estimate of annual energy output in kWh that summarizes the results of the System Loss Analysis.
- E. Total system and itemized costs broken down as follows: cost of panels, cost of inverter(s), balance of system (wires, racks, etc.), and labor and overhead (labor, permitting, etc.).
- F. Applicable incentives. The Customer Purchase Agreement must reflect the entire amount of the approved NYSERDA Incentive.

- G. An explanation and estimate of any and all costs that the customer will incur associated with the development, installation, and commissioning of PV System that are not included in the Eligible Installer's price quote.
- H. Payment schedule.
- I. PV System Warranty. A full warranty to the purchaser of the PV generation system installed under the Agreement for a period of 5-years after installation. The warranty must cover all components of the PV System against breakdown or degradation in electrical output of more than ten percent from their original rated electrical output. The warranty must cover the full costs, including labor and repair or replacement of defective components or systems. If the PV System includes a battery back, the battery system must be covered by a full warranty including labor and repair or replacement of the battery to the purchaser for 2-years after installation.
- J. Addendum to Customer Purchase Agreement (See Exhibit A to this Agreement). Each Customer Purchase Agreement must incorporate, as part thereof, the Addendum to Customer Purchase Agreement in the form provided at Exhibit A, completed and signed by both the customer and the Eligible Installer.

Article 7: Installation Site Visit/Inspections

Section 1: Site Visits. NYSERDA or its representatives may make a reasonable number of visits to the customer site before, during and/or after Installation of a PV System. Such visit(s) will be at a time convenient to the customer.

Section 2: Purpose of Site Visit. The purpose of the site visit(s) is to provide NYSERDA with an opportunity to evaluate the site, the system design as submitted, and the Installed PV System in order to determine the actual kW production for program evaluation purposes and to verify that the PV System was installed according to the approved system design and all PV Program requirements. Final incentive payments may be contingent on NYSERDA's inspection of an Installed PV System.

Section 3: Site Visit Report. NYSERDA may provide a written report summarizing the results of the PV System inspection to the Eligible Installer. If the site visit report indicates that there are deficiencies in the PV System or that the PV System was not installed in conformance with the requirements of PON 1050 and/or this Agreement, NYSERDA may provide a copy of the site visit report to the customer, all authorities having local jurisdiction, and the interconnecting utility.

Section 4: Communication with Customer. The Eligible Installer agrees that NYSERDA may, at NYSERDA's discretion, communicate by voice and/or written format with any PV System customer as to whom an Application for Incentives has been submitted, with respect to any matter relevant to the proposed PV System or the Installation of such PV System. Such communications may be in reply to an inquiry from a customer or at NYSERDA's initiation.

Article 8: Processing of Applications for Incentives

Section 1: Review of Applications for Incentives. NYSERDA will review Applications for Incentives in the order in which they are received while the PV Program is open. NYSERDA expects that it will, under normal circumstances, contact an Eligible Installer regarding a completed application within 30 business days of receipt. Processing of Applications for Incentives that are incomplete or that otherwise do not conform to the requirements of PON 1050, the PV Program, or this Agreement will be delayed; such Applications for Incentives may be rejected by NYSERDA.

Section 2: Rejection of Applications for Incentives. NYSERDA may reject Applications for Incentives (a) that are not complete, accurate, and signed by the customer and Eligible Installer, (b) that do not meet the requirements of the PV Program as described in PON 1050 or elsewhere in this Agreement, (c) that request Incentives for a system that NYSERDA determines was installed, partially or completely, at the time of its receipt of the Application for Incentives, (d) as to which the Installation and/or interconnection schedules identified in a Customer Purchase Agreement are not reasonable, (e) where the Insurance required by this Agreement has expired, based on Certificates of Insurance filed by the Eligible Installer, or (f) that are received by NYSERDA in excess of 45 days from the date of execution of the corresponding Customer Purchase Agreement, or (g) submitted by an Eligible Installer whose Eligible Installer status has been revoked or suspended, or where the non-customer party to the Customer Purchase Agreement is the non-customer party as to PV Systems for which Incentives have been applied for and where such PV Systems are the subject of unresolved application, installation, performance or customer dissatisfaction issues.

Section 3: Design Review. Based on the information provided, a proposed PV System may be sent out to NYSERDA's technical consultant for a detailed design review; NYSERDA will notify the Eligible Installer and the customer in such instances. The Eligible Installer will be contacted directly by NYSERDA's technical consultant regarding any questions that may arise; the Eligible Installer shall respond promptly to resolve any issues raised. Once NYSERDA receives the design review report, NYSERDA will complete its final review of the application.

Section 4. Notification. A letter providing written notice of NYSERDA's approval or rejection of each Application for Incentives will be provided to both the Eligible Installer and the customer. The approval letter will include the total amount of Incentives for which the corresponding PV System is eligible. To retain eligibility for Incentives, Installation must not commence prior to receipt by the Eligible Installer of notification of approval of a PV System; such PV System must then be Installed in accordance with the Application for Incentives as to which the approval was given.

Section 5. Prompt Delivery and Installation Requirements. To retain eligibility for Incentives as to any Application for Incentives, all system components must be delivered to the customer's site within 90 days of notification of approval of the Incentive. PV System Installation must be complete within 90 days from the date the initial invoice is approved by NYSERDA. Incentive approvals for any PV System may be cancelled by NYSERDA where these requirements are not

met. Unless otherwise agreed upon in writing by NYSERDA and Installer, if the system is not installed within 90 days of Installer's receipt of the first incentive payment from NYSERDA, the Installer will be required to return any and all incentive payments to NYSERDA. Applications for payment of additional incentives for Energy Star homes (See Attachment G) must be received by NYSERDA within one year of the interconnection date for the PV System.

Section 6. Extensions. Extensions to the delivery and installation time requirements of Section 4 may be granted at NYSERDA's discretion, upon written request by the Eligible Installer and the customer, accompanied by justification found sufficient by NYSERDA.

Article 9: Payment

Section 1: Initial Payment Procedure. NYSERDA will pay 75% of the approved Incentive for an approved PV System upon receiving a completed Initial Incentive Payment Form (See Attachment D) accompanied by proof that all major approved PV System components and equipment have been delivered to a customer's site and proof that all required permits and approvals have been secured. Major approved PV System components and equipment include, at a minimum, the complete solar electric generator, inverter, and batteries if applicable. A packing slip or bill of lading verifying delivery of all and approved PV System components to the customer site and signed by the customer is required for proof for payment.

Section 2: Final Payment Procedure. The remaining 25% of the approved incentive will be paid upon receipt of a completed Final Incentive Payment Form (See Attachment E), accompanied by a copy of Attachment F (Final Invoice Checklist), proof that the PV System has been connected to the utility grid and has been inspected by all authorities having jurisdiction. Documentation for all applicable utility, state, city, town, and other inspections and approvals must be attached. Final incentive payments may be contingent on NYSERDA's inspection of an Installed PV System.

Section 3. Eligibility for Incentives. To retain eligibility for Incentives, Installation must not commence prior to receipt by the Eligible Installer of notification of approval of a PV System; such PV System must then be Installed in accordance with the Application for Incentives as to which the approval was given. To retain eligibility for Incentives as to any Application for Incentives, all system components must be delivered to the customer's site within 90 days of notification of approval of the Incentive. PV System Installation must be complete within 90 days from the date the initial invoice is approved by NYSERDA. Incentive approvals for any PV System may be cancelled by NYSERDA where these requirements are not met. Unless otherwise agreed upon in writing by NYSERDA and Installer, if the system is not installed within 90 days of Installer's receipt of the first incentive payment from NYSERDA, the Parties recognize that Installer will be required to return any and all incentive payments to NYSERDA.

Section 4: Post-Installation Verification. If, based on a post-installation site visit, NYSERDA determines that the PV System was not Installed in a manner that is consistent with PON 1050, this Agreement, the approved Application for Incentives, the manufacturers' instructions, or generally accepted good practices, NYSERDA may (a) elect to not pay the incentive, (b) require

changes before making any payments, (c) require reimbursement of incentives already paid unless the requested changes are made, or (d) suspend approval of Incentives for other PV Systems.

Section 5: Charge for Multiple Site Visits and/or Design Reviews. If more than two site visits or design reviews are made necessary due to the failure by the Eligible Installer to respond to or to make corrections or modifications requested by NYSERDA based on previous site visit reports or design reviews, NYSERDA may charge the Eligible Installer the cost of site visits in excess of the initial two site visits.

Section 6: Charge for Remedying System Deficiencies. If it is necessary for NYSERDA or its representative to remedy system deficiencies due to the failure by the Eligible Installer to make corrections or modifications requested by NYSERDA, NYSERDA may charge the Eligible Installer the cost of correcting such deficiencies.

Section 7: Approval of Incentives. NYSERDA reserves the right, for any reason, to refrain from approving Applications for Incentives for an individual Eligible Installer or for all Eligible Installers at any time. NYSERDA will not process an Application for Incentives submitted by an Eligible Installer whose Eligible Installer status has been revoked or suspended, or where the non-customer party to the Customer Purchase Agreement is the non-customer party as to PV Systems for which Incentives have been applied for and where such PV Systems are the subject of unresolved application, installation, performance or customer dissatisfaction issues.

Section 8: Right to Deny, Change, or Seek Reimbursement of Incentive Payment.

Notwithstanding any other provision of these Terms and Conditions, NYSERDA reserves the right to deny or alter payment of an incentive, to exercise its Set-Off rights, or to seek reimbursement of incentives paid if, at any time, it learns that the approved PV system was not actually installed, not installed by, or under the supervision of an Eligible Installer, not installed as required under this PON 1050 or this Agreement, not installed according to the approved system design, or if a system was partially or completely installed prior to NYSERDA approval of an incentive payment.

Section 9: Designation of Payee. NYSERDA will make all payments due and owing to the Eligible Installer or such entity as the Eligible Installer may designate under Article 15 hereto.

Section 10: Prompt Payment Policy. Payment by NYSERDA will be made pursuant to NYSERDA's Prompt Payment Policy. See <http://www.nyserda.org/exhibitd.pdf>.

Section 11. 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 Eligible Installer under this Agreement up to any amounts due and owing to NYSERDA with regard to 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.

Article 10: Eligible Installer Responsibilities

Section 1: Responsible Party. The Eligible Installer will be considered the responsible party under the PV Program, and will be responsible for all PV System Installations for which an Application for Incentives is submitted, regardless of whether the Installation was performed partially or completely by other members of his or her firm or company or by subcontractors or by unrelated entities. It is expected that an Eligible Installer will play a significant role in PV System design, Installation, and commissioning. If it is determined that an Eligible Installer is not closely involved in all primary program or project elements, or fails to ensure that employees and/or subcontractors comply with program requirements, an Installer's Eligibility status may be affected.

Section 2: Business Practices. The Eligible Installer and its employees and subcontractors shall treat customers fairly and in good faith, and shall deliver promised services in a timely, responsible, professional, and competent manner. The Eligible Installer shall fairly represent NYSERDA's Program and its relationship to NYSERDA to customers and the public.

Section 3: Maintain Installation Skills. Eligible Installers are required to maintain their PV System installation skills by either successfully installing a PV System or by attending at least one in-depth PV System installation training course every 24 months. Eligible Installers who fail to meet this requirement will have their eligibility status suspended or changed to probationary until they have demonstrated updated skills.

Section 4: Sound Installation Practices. The Eligible Installer agrees that all PV Systems will be designed and Installed in accordance with sound and currently accepted industry standards and practices.

Section 5: Pre-Installation Verification. The Eligible Installer is responsible for performing a proper site evaluation to ensure that each site meets the requirements of the PV Program, and to determine the feasibility of installing an end-use PV System. Such an evaluation should include, but not be limited to factors such as shading, orientation, payment into the RPS, roofing and ground mounting issues, etc.

Section 6: Employees and Subcontractors. The Eligible Installer may have employees or subcontractors working under his/her supervision. The Eligible Installer is responsible for ensuring that all persons performing work on any installation under this Agreement are qualified to do the work they perform. The Eligible Installer is required to ensure that all of his or her employees and/or subcontractors act within the program requirements and the terms and conditions of this Agreement. NYSERDA reserves the right to request insurance documentation and subcontractor agreements for any subcontractor, and to request the identity of all individuals who will participate in the installation of a PV System. As to any PV System for which an Application for Incentives has been submitted, the Eligible Installer may not employ or hire any individual whose participation in PON 716, PON 1050, the PV Program, or any other NYSERDA program has been suspended or terminated, without NYSERDA's prior written permission.

Section 7: Data Collection. The Eligible Installer is responsible for submitting all meter readings to NYSERDA, regardless of who agrees to take the meter readings. Meter readings must be conducted by the installer or customer at least every six months and energy and power production data submitted to NYSERDA two times per year for three years for each installed system. For systems 25 kW and larger meter readings must be taken monthly and data submitted to NYSERDA every six months.

Article 11: Renewable Attributes

Section 1: Renewable Attributes. NYSERDA will own the rights, and any and all claims, to all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled (“RPS Attributes”), attributable to all kilowatts of electrical energy generated by the PV System Installed hereunder during the first three years of operation of the PV System. RPS Attributes, which may also be referred to as renewable energy credits (“RECs”), green power attributes or tradable renewable credits are the environmental benefits associated with electricity that is generated from renewable sources such as wind or solar.

Article 12: Suspension, Revocation of Eligible Installer Status

Section 1: Compliance with Program Terms and Conditions. The Eligible Installer acknowledges that failure to adhere to the terms and conditions of participation in the PV Program, including but not limited to the Eligible Installer Responsibilities as set forth at Article 10 hereto, or to otherwise follow program requirements and procedures may result in the suspension or revocation of Eligible Installer status, and/or relegation to probationary status. Eligible Installers are subject to demonstration that they are meeting all PV Program requirements for each Installation and Eligible Installer performance may be evaluated through planned and random system inspections. Complaints received by NYSERDA from PV System customers will be documented and investigated by NYSERDA or its representatives, and shared with the Eligible Installer.

Section 2: Performance Issues. An Eligibility Application Form will not be processed if the applicant is listed as the Eligible Installer on delinquent, open PV Systems under PON 716, or where there exist unresolved customers or performance issues with respect to a PON 716 PV System or any similar NYSERDA program. An Eligible Installer cannot subcontract to any person or company that has been terminated from PON 716 or any other NYSERDA program. NYSERDA will not process an Incentive Application Form submitted by an Eligible Installer whose Eligible Installer status has been revoked, or where the non-customer party to the Customer Purchase Agreement has open delinquent PV Systems or where such PV Systems are the subject of installation as to which customer or performance issues remain unresolved.

Section 3: Provisional Status. If an Applicant does not meet PV Program requirements related to training and experience installing grid connected PV Systems, an installer may, at NYSERDA’s discretion, be approved as a Provisional Eligible Installer, assuming all other program requirements have been met. Provisional Eligible Installer status is considered on a

case-by-case basis and is determined by a number of factors, including, but not limited to verifiable training and demonstrated experience and education. Provisional Installers will be permitted to work with NYSERDA and customers on a single project-by-project basis until three grid-connected PV Systems are successfully installed under the PV Program, in accordance with all program requirements, terms, and conditions. Upon completion of three PV System installations, in accordance with all program requirements, an installer will be considered for full Eligible Installer status. Provisional installers can apply for incentives, one project at a time; however, Provisional Installers may not be included in the list of Eligible Installers posted on NYSERDA's website.

Section 4: Eligible Installer Status/Criteria. NYSERDA may suspend, revoke, or make probationary the Eligible Installer's participation in the PV Program. Actions taken by NYSERDA will reflect both the severity and the frequency of the issues, failures or violations, that caused the actions to be taken. The will also be considered by NYSERDA when determining the resulting action. If NYSERDA determines that a failure or violation must be remedied, the Eligible Installer's promptness in pursuing of the remedy will be considered when determining the resulting action. Failures or violations that may result in a loss of applicable incentives and possible termination of this Agreement as described above, include, but are not limited to:

- (a) Failure to conform to the Eligible Installer Responsibilities.
- (b) Failure to act professionally, fairly, and in good faith with the customer, NYSERDA, or NYSERDA's representatives.
- (c) Failure to follow the PV Program requirements and procedures.
- (d) Failure to conform to the PV System Requirements, Applications for Incentives, and Prompt Delivery and Installation Requirements, as set forth herein.
- (e) Providing inaccurate, false or misleading information verbally or in writing on the PV Program or the Eligible Installer's status in the PV Program to NYSERDA's representatives, customers, utility staff, local officials, the general public, or others.
- (f) Failing to adequately and promptly address PV System problems as identified by NYSERDA or the customer.
- (g) Repetitive errors in PV System design or performance calculations, or in PV System Installation.
- (h) customer complaints that are substantiated and significant or that indicate repetitive failure to conform to PV Program requirements.
- (i) Failure to honor the required minimum 5-year full system warranty.
- (j) Failing to meet all reporting needs in a timely manner, including submission of performance data for each installed system for three years.

Section 5: Suspension of Eligible Installer Status. NYSERDA may in its sole discretion suspend Eligible Installer status if it determines that issues, failures or violations exist with respect to any PV System, or for failure of the Eligible Installer to adhere to the terms and conditions of this Agreement. Such period of suspension will continue until such time as the identified issue(s), failure(s), and/or violation(s) have been remedied or addressed to the satisfaction of NYSERDA. During a period of suspension, Eligible Installers may not represent themselves as Eligible

Installers, may not submit new Applications for Incentives, and the Eligible Installer's name will be removed from the list of Eligible Installers posted on NYSERDA's website.

Section 6: Revocation of Eligible Installer Status. NYSERDA may in its sole discretion revoke Eligible Installer status for repeated or serious violations or failures to adhere to the terms and conditions of this Agreement. Eligible Installers whose status has been revoked may not represent themselves as Eligible Installers, may not submit new incentive applications, and will be removed from the list of Eligible Installers posted on NYSERDA's website.

Section 7: Probationary Status. Eligible Installers with performance issues or Suspended Eligible Installers that have addressed all outstanding issues to NYSERDA's satisfaction, may, at NYSERDA's discretion, be placed on probationary status. Probationary Installers will be permitted to work with NYSERDA and customers on a single project-by-project basis until such time as NYSERDA determines that full Eligible Installer status is in the best interests of the PV Program.

Section 8: Appeal Process. Eligible Installers may request reconsideration of a NYSERDA determination regarding suspension, revocation or probationary eligibility. Such requests must be written, must fully describe the basis upon which reconsideration is requested, and must be received by NYSERDA within 30 days of receipt of NYSERDA's Notice or determination. The request shall be addressed to:

Director of Contracts–PON 1050
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

NYSERDA will consider the request and issue a final written decision within 30 days of receipt of a request for reconsideration.

Article 13: Insurance

Section 1: Insurance Required. The Eligible Installer, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts of this Agreement. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement number and name or be endorsed to cover the Eligible Installer as the insured, and NYSERDA and the State of New York as additional insureds, and reference all work to be performed under the PV Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; (3) indicate that insurance covers NYSERDA PON 1050, or installing end-use PV Systems; and (4) be reasonably satisfactory to NYSERDA in all other respects. If the Eligible Installer directs that payments be made payable to an Affiliated Entity as opposed to the Eligible Installer, the certificate of insurance must identify the Affiliated Entity as an additional insured.

Section 2: Types and Amounts of Insurance. The types and amounts of insurance required to be maintained under this Section are as follows: (1) commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and (2) commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Eligible Installer for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in anyone accident or disaster.

Section 3: Providing Updated Insurance Certificates. Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Eligible Installer shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Eligible Installer shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not accept applications or make payments under this Agreement without current insurance certificates.

Section 4: Certified Copy of Insurance. 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 the Eligible Installer shall deliver to NYSERDA a certified copy of each policy.

Section 5: Notifications. Within five working days, or contemporaneously with the requirements of each insurance policy, the Eligible Installer shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Eligible Installer, the non-customer party to the applicable Customer Purchase Agreement or NYSERDA.

Article 14: Indemnification

Section 1: Indemnification. The Eligible Installer 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, experts' and/or attorney's fees and expenses) imposed upon, or incurred by, or asserted against, NYSERDA or the State of New York resulting from, arising out of or relating to the Eligible Installer's performance of this Agreement. The obligations of the Eligible Installer under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article 15: Governing Law; Venue

Section 1: 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 New York State Court located in Albany, New York having subject matter jurisdiction over such matters or the United States District Court for the Northern District of New York, 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.

Article 16: Miscellaneous

Section 1: Scope of Warrantees. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer, product or the Eligible Installer, and NYSERDA disavows and provides no warranties, expressed or implied, for any product or services that may be rendered hereunder. The Eligible Installer's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, manufacturers, etc.

Section 2: Scope of NYSERDA Review. The Eligible Installer acknowledges that neither NYSERDA nor any of its representatives are responsible for assuring that the design, engineering, construction and/or Installation of the PV System is proper or in compliance with any particular laws (including patent laws), regulations, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by any PV System, or the adequacy or safety of such measures. The scope of review by NYSERDA of the Installation of the PV Systems is limited solely to determining whether such PV Systems conform to PV Program terms, conditions, and requirements.

Section 3: Criminal Activity. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Eligible Installer or any of its principals is under indictment for a felony, or has been, within five (5) years prior to the effective date of this Agreement, convicted of a felony, under the laws of the United States or Territory of the United States, or 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.

Section 4: Release by Eligible Installer. The acceptance by the Eligible Installer or Eligible Installer's designee of final payment shall release NYSERDA from all claims and liability by the Eligible Installer, its designee, representatives, and assigns might otherwise have relating to this Agreement.

Section 5: Entire Agreement. This Agreement is the entire Agreement between NYSERDA and the Eligible Installer and supersedes all other communications and representations. If either

NYSERDA or the Eligible Installer desires to modify this Agreement, the modification must be in writing and signed by an authorized representative of the party against which enforcement of the modification is sought. Eligible Installers must receive approval from NYSERDA for any modification of the proposed system or the incentive may be disqualified.

Section 6: Independent Contractor. The status of the Eligible Installer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Eligible Installer, the Eligible Installer's subcontractors, and their 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.

Section 7: Proprietary Information. Careful consideration should be given before confidential information is submitted to NYSERDA 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.

Section 8: Freedom of Information Law. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA 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 NYSERDA that the contractor 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 accept it from disclosure, including a written statement of the reasons why the information should be excerpted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Section 9: 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
30 South Pearl Street
Albany, NY 12245

A directory of certified minority- and women-owned business enterprises is available from:
Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

Section 10: Limitation. This Agreement does not commit NYSERDA to approve an Application for Incentives, pay any costs incurred in preparing an Application for Incentives, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all Application for Incentives received, to negotiate with all qualified sources, or to cancel in part or in its entirety PON 1050 when it is in NYSERDA's best interest.

Section 11: Publicity. Eligible Installers shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning PV Systems installed under the PV Program. In addition the Eligible Installer shall notify NYSERDA's Director of Communications regarding any media interview involving PV Systems installed under the PV Program.

Section 12: Marketing. Commercial promotional materials, advertisements, informational brochures, and web site content produced by the Eligible Installer or customer shall credit NYSERDA and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. Such content may be approved in advance by NYSERDA, and, after initial approval, such content may be used in subsequent promotional materials or advertisements without additional approvals. In the event that NYSERDA determines that the Eligible Installer is presenting or publishing incorrect or misleading information regarding the PV Program or Eligible Installer's status in the PV Program the Eligible Installer agrees to make appropriate modifications promptly upon notification by NYSERDA. If a website maintained by or for the Eligible Installer includes references to NYSERDA and/or the PV Program, the website must include the following link: <http://www.powernaturally.org/Programs/Solar/incentives.asp>

Section 13: Designated E-Mail Address. Eligible Installer agrees and consents to receive notices via electronic mail at: _____.

Article 17: Changes to Program

Section 1: Program Changes. PON 1050 and the PV Program may be changed by NYSERDA at any time. The Eligible Installer will be notified of changes via the Designated E-Mail Address provided by the Eligible Installer. Changes will be applicable to all PV Systems not yet approved by NYSERDA as of the time of such change.

Article 18: Termination

Section 1: Termination. This Agreement may be terminated by NYSERDA at any time upon notice to the Eligible Installer. If the Eligible Installer wishes to cancel or terminate this agreement, NYSERDA may seek reimbursement of any incentives provided by NYSERDA

regarding PV Systems that have not been completely installed, interconnected, and commissioned or that have not submitted three full years of PV System data readings as required in this Agreement.

Article 19: Effective Date

Section 1: Effective Date. This Agreement shall become effective and binding when executed by both NYSERDA and the Eligible Installer.

Article 20: Certification:

Section 1: Eligible Installer. I certify that all information provided in my Application for Eligible Installer Status, including any attachments, is true and correct to the best of my knowledge. I have reviewed the eligibility criteria and I understand that I will be required to provide additional information to NYSERDA and to verify individual PV System eligibility. I have read and understand this PON 1050 Eligible Installer Agreement which are part of this application and agree to abide by them.

Section 2: Affiliated Entity. If the Eligible Installer anticipates submitting Applications for Incentives for PV Systems as to which the Customer Purchase Agreement will be executed by an entity other than the Eligible Installer, such as a company for which the Eligible Installer will be providing services (“Affiliated Entity”), such Affiliated Entity must execute this Agreement in addition to the Eligible Installer. As indicated in the Installer Eligibility Application Form previously submitted, the Eligible Installer hereby directs that all Incentive payments to be made under this Agreement be made payable to the Affiliated Entity named below:

Affiliated Entity: _____

Address: _____

IN WITNESS WHEREOF, intending to be bound, NYSERDA and the Eligible Installer have executed this Agreement.

Eligible Installer Signature: _____

Date: _____

Print Name and Title: _____

Eligible Installer Affiliated Entity (if any)

Signature of Representative: _____

Date: _____

Print Name and Title: _____

NYSERDA Authorized Representative:

Signature: _____

Date: _____

Name and Title: _____

EXHIBIT A

REVISED 9/06

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

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

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

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

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it

by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

10. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

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

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

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

- a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.
- d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference. NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

EXHIBIT B

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

later of:

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

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

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

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

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

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

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

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

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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